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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]77

THE BANK OF JASPER, PETITIONER,

vs.

THE STATE BANK OF ROME, GEORGIA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED JUNE 7, 1920.

CERTIORARI AND RETURN FILED OCTOBER 20, 1920.

(27,741)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 384.

THE BANK OF JASPER, PETITIONER,

vs.

THE STATE BANK OF ROME, GEORGIA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on the Third Monday in November, A. D. 1919, at New Orleans, Louisiana, Before the Honorable Richard W. Walker, Circuit Judge, and the Honorable William I. Grubb and the Honorable George W. Jack, District Judge.

THE STATE BANK OF ROME, Plaintiff in Error,

versus

THE BANK OF JASPER, Defendant in Error.

Be it remembered, That heretofore, to-wit, on the 25th day of August, A. D. 1919, a transcript of the record in the above styled cause, pursuant to a writ of error to the District Court of the United States for the Southern District of Florida, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3432, as follows, to-wit:

b TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3432.

THE STATE BANK OF ROME, Plaintiff in Error,

versus

THE BANK OF JASPER, Defendant in Error.

Error to the District Court of the United States for the Southern District of Florida.

[Original Record Filed August 25, 1919.]

U. S. Circuit Court of Appeals. Filed Nov. 15, 1919. Frank H. Mortimer, clerk.

1 In the District Court of the United States, Southern District of Florida.

AMERICAN BANK & TRUST COMPANY, a Corporation under the Laws of Georgia and Doing Business at Rome, Georgia, Plaintiff.

versus

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

To the clerk of said court:

You will please issue summons ad respondendum directed to the defendant in the above entitled cause, in an action in assumpsit, damages $8,000 and make the same returnable to the rule day in March A. D. 1913, the same being the 3rd day of said month, and oblige.

KAY & DOGGETT,
Attorneys for Plaintiff.

Indorsed: Praecipe for Summons. Filed Jan. 27, 1913. E. O. Locke, Clerk.

* * * * * * *

2 *Appearance.*

In the District Court of the United States for the Southern District of Florida.

AMERICAN BANK AND TRUST COMPANY, a Corporation under the Laws of the State of Georgia, Plaintiff.

vs.

THE BANK OF JASPER, a Corporation under the Laws of the State of Florida, Defendant.

Civil Action—Damages $8,000.00.

And now comes the defendant by its undersigned attorneys, and enters its appearance herein on this Rule Day in March, A. D. 1913.

S. S. SANDFORD,
CARTER & McCOLLUM,
Attorneys for Defendant.

Indorsed: Appearance. Filed March 3, 1913. E. A. Locke, Clerk.

Declaration.

In the District Court of the United States, Southern District of Florida.

AMERICAN BANK & TRUST COMPANY, a Corporation under the Laws of Georgia and Doing Business at Rome, Georgia, Plaintiff,

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

Comes now the American Bank and Trust Company, a
3 corporation organized and existing under, and by virtue of the laws of Georgia, and doing business at Rome, Georgia, plaintiff in the above entitled cause, by Kay & Doggett, its attorneys, and sues The Bank of Jasper, a corporation organized and existing under and by virtue of, the laws of Florida, and doing business at Jasper, Florida; and the plaintiff avers that the said American Bank & Trust Company is a citizen of the State of Georgia, and that the said Bank of Jasper is a citizen of the State of Florida, having its principal place of business at Jasper, Florida; and the plaintiff further avers that the matter in controversy herein exceeds, exclusive of interest and cost, the sum of $3,000.00.

For a first count, plaintiff says that the said Bank of Jasper, on, to-wit, November 29th, 1911, at to-wit, the city of Jasper, Florida, by its negotiable certificate of deposit of that date, the same being a certificate of deposit No. 321, for value received, promised the American Bank & Trust Company, Trustee, of Rome, Georgia, to pay it or its order, the sum of $1,704.00, on or after, to-wit, November 28th, 1912, with interest at the rate of 4 per cent per annum, compounded quarterly; and the said American Bank & Trust Company, Trustee, thereafterwards indorsed the said certificate of deposit to the American Bank and Trust Company, Rome, Georgia, and the said certificate of deposit, after several successive indorsements which appear thereon, and which are shown by the copy of the said certificate of deposit and attached to and hereby made a part of this declaration, the said certificate being found in the bill of particulars attached hereto, became the property of the American Bank and Trust Company, whereby, the said Bank of Jasper became liable and in consideration thereof, promised the plaintiff to pay it the contents of the said certificate of deposit, according to the tenor thereof; and the plaintiff avers that the said 28th day of November, 1912, has long since passed, yet, though since that time requested, the said request being accompanied with a return of the said certificate of deposit properly indorsed, the said Bank
4 of Jasper hath never paid the said amount, nor any part thereof, but refuses so to do.

And for a second count, plaintiff says that the said Bank of Jasper, on, to-wit, November 29th, 1911, at, to-wit, the city of Jasper,

Florida, by its negotiable certificate of deposit of that date, the same being its certificate of deposit No. 321, for value received, promised the American Bank and Trust Company, Trustee, of Rome, Georgia, to pay it or its order, the sum of $294.00, on or after, to-wit, November 29th, 1912, with interest at the rate of 4 per cent per annum, compounded quarterly; and the said American Bank and Trust Company, Trustee, thereafterwards, indorsed the said certificate of deposit and the said certificate of deposit, after several successive indorsements which appear thereon, and which are shown by copy of the said certificate of deposit attached to and hereby made a part of this declaration, the said certificate being found in the bill of particulars attached thereto, became the property of the American Bank and Trust Company, whereby, the said Bank of Jasper became liable and in consideration thereof, promised the plaintiff to pay it the contents of the said certificate of deposit according to the tenor thereof; and the plaintiff avers that the said 29th day of November 1912 has long since passed, yet, though since that time requested, said request being accompanied with a return of the said certificate of deposit properly indorsed, the said Bank of Jasper hath never paid the said amount, nor any part thereof, but refuses so to do.

And for a third count, plaintiff says that the defendant, on, to-wit, the 28th day of November, 1911, at, to-wit, the city of Jasper aforesaid, received the sum of $4,704.00 for the use of the plaintiff, and in consideration thereof, promised to pay the plaintiff on or after, to-wit, November 28th, 1912, the said sum of money so due as aforesaid, with interest at the rate of 4 per cent per annum, compounded quarterly; and the plaintiff avers that the said 28th day of November, 1912 has long since passed, yet, though since that time requested, the defendant hath never paid the sum, nor any part thereof, but refuses so to do.

And for a fourth count, plaintiff says that the defendant, on, to-wit, the 29th day of November, 1911, at, to-wit, the city of Jasper aforesaid, received the sum of $294.00 for the use of the plaintiff, and in consideration thereof, promised to pay the plaintiff on or after, to-wit, November 29th, 1912, the said sum of money so due as aforesaid, with interest at the rate of 4 per cent per annum, compounded quarterly; and the plaintiff avers that the said 29th day of November, 1912, has long since passed, yet, though since that time requested, the defendant hath never paid the said sum, nor any part thereof, but refuses so to do.

Wherefore, the plaintiff brings this, its suit, against the defendand, and claims damages in the sum of $8,000.00.

KAY & DOGGETT,
Attorneys for Plaintiff.

Bill of Particulars.

No. 320.

The Bank of Jasper.

$4,704.00

Jasper, Florida, Nov. 28, 1911.

American Bank & Trust Company, Trustee, of Rome, Ga., has deposited in this bank Forty-seven Hundred, four and No/100 Dollars, payable to the order of itself with interest at rate of 4% per annum compounded quarterly, on the return of this certifi-
6 cate properly indorsed on or after Nov. 28, 1912.
Not subject to check.

W. S. MURROW,
Cashier.

Copy.

Certificate of Deposit.

(Indorsed on Back.)

Without recourse, American Bank
& Trust Co., Trustee,
by T. J. Simpson, Vice Pres.

American Bank & Trust Co.,
Rome, Ga.
by S. F. Magruder, Cashier.

The Hamilton National Bank,
by C. H. Preston, Cashier.

Pay Atlantic National Bank
Jacksonville, Fla., or order
First National Bank, Cincinnatti, Ohio.
T. J. Davis, Cashier.
Report No. 17343.

Pay to the order of any bank or banker
coll. Nov. 15, 1912, Dept.
63–2 63–2
The Atlantic National Bank,
Jacksonville, Fla.
D. D. Upchurch, Cashier.

No. 321.

The Bank of Jasper.

$294.00
$305.94

Jasper, Fla., Nov. 29, 1911.

American Bank & Trust Company, Trustee, of Rome, Ga., has deposited in this Bank Two Hundred Ninety Four and
7 No/100 Dollars payable to the order of itself with — at rate of 4% per annum compounded quarterly on the return of this certificate properly indorsed on or after November 29th, 1912
Not subject to check.
(Copy.)

W. S. MURROW,
Cashier.

Certificate of Deposit.

(Indorsed on Back.)

Without recourse
American Bank & Trust Company, Trustee,
By T. J. Simpson, Vice-President.

Pay any Bank, Banker or Trust Co.
or order,
Hamilton National Bank,
Chattanooga, Tenn.
For Collection.
C. M. Preston, Cashier.

Pay to the order of any Bank, Banker or Trust Co.
All prior indorsements guaranteed.
November 20th, 1912.
American Bank and Trust Co.,
64-83 Rome, Georgia, 64-83
S. F. Magruder, Cashier.

Collection No. 11673.
Pay any Bank or Banker,
or order
Heard National Bank
Jacksonville, Fla.
C. W. Dendly, Cashier.

Indorsed: Declaration. Filed March 3, 1913, E. O. Locke, Clerk

8 *Stipulation of Counsel.*

In the District Court of the United States for the Southern District of the State of Florida.

AMERICAN BANK & TRUST COMPANY OF ROME, GEORGIA, Plaintiff,

vs.

THE BANK OF JASPER, FLORIDA, Defendant.

It is hereby stipulated and agreed between counsel representing the plaintiff and counsel representing the defendant in the above entitled cause, that the time for further pleading by the defendant may be and the same is hereby extended until the Rule Day in August, 1914, and an order may be entered accordingly.

Agreed to this 20th day of July, 1914.

KAY & DOGGETT,
Attorneys for Plaintiff.
CARTER & McCOLLUM,
Attorneys for Defendant.

Upon consideration of the foregoing stipulation it is hereby ordered that the time for further pleading in the above entitled cause by the defendant be, and the same is hereby extended until the Rule Day in August, 1914.

Done and ordered this 20th day of July, 1914.

R. M. CALL,
Judge.

Indorsed: Stipulation and Order of Court. Filed July 20, 1914. E. D. Dodge, Clerk.

9 *Additional Pleas of Defendant.*

In the District Court of the United States for the Southern District of Florida.

AMERICAN BANK & TRUST COMPANY OF ROME GEORGIA, Plaintiff,

vs.

THE BANK OF JASPER, FLORIDA, Defendant.

Comes now the defendant by its undersigned attorneys — for an additional plea to the First count of plaintiff's declarations says:

That the said plaintiff ought not to have and maintain its action in this behalf because prior to the commencement of this suit and on, to-wit, the 3rd day of January, 1913, one W. S. Murrow instituted this suit on the Chancery side of the Circuit Court of Hamilton County, Florida, against this defendant and the said plaintiff

herein and against the Rome Insurance Company and —— ——, and this defendant avers that said Circuit Court of Hamilton County, Florida, was and is a Court of general jurisdiction; that in and by said suit so instituted as aforesaid, it was claimed and alleged by the said complainant therein, among other things, that the certificate of deposit, in said count sued upon, was issued by this defendant to cover and include the proceeds of a certain note executed by the said complainant W. S. Murrow, and that said note was made payable to the order of the said complainant, and was procured by the false and fraudulent representations of the said Rome Insurance Company, and its Trustee, the said American Bank & Trust Company; that the proceeds of said note so procured as aforesaid, were deposited with this defendant in its banking house in Jasper, Hamilton County, Florida, and the certificate of deposit, in said count sued upon, represents and covers the proceeds of said note so procured as aforesaid, and that such deposit has at all times since the date of said certificate of deposit been and remained in the said banking house of this defendant at Jasper aforesaid, and in *and in* and by said suit the said complainant W. S. Murrow claimed and alleged that the said deposit was created by the fraud and deceit of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and that said certificate of deposit, in this count sued upon, was likewise procured by the fraud of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and the said complainant in the said Chancery suit sought to have the said fund, the proceeds of said certificate of deposit, in the defendant's banking house at Jasper aforesaid, impressed with a trust in favor of said complainant and therein and thereby prayed, among other things, that the said certificate of deposit be decreed null and of no effect and that the said funds be decreed to belong to the said complainant in said Chancery suit; that thereafter, to-wit, on the 14th day of July, 1914, and since the filing of the last pleadings herein, the Judge of the said Circuit Court of Hamilton County, Florida, duly rendered a final decree in said Chancery suit and therein and thereby adjudged and decreed, among other things, the proceeds of said complainant's note, to-wit, the sum of Two Hundred Ninety-four Dollars, covered by and included in the said certificate of deposit, in this count sued upon, and held by the plaintiff herein, to be impressed with a trust in favor of the complainant and were adjudged to belong to him, and the plaintiff herein was decreed to have no right, title, interest, claim or demand of, in and to the said proceeds or any part thereof, and this defendant was therein and thereby required and directed to pay the said proceeds over to the said complainant in said Chancery suit, and was enjoined from paying the said process to the plaintiff herein or to anyone for it; and in and by said final decree the certificate of deposit, in this count sued upon, dated the 28th day of November, 1911, in so far as it covered and included the proceeds derived from said note executed by the complainant in said Chancery suit, was decreed to be

void and of no effect; that said final decree was duly and
11 regularly entered and recorded in Circuit Court Minute Docket No. 11, page 287 of the Public Records of Hamilton County, Florida, on the 14th day of July, 1914; all of which will more fully appear reference being had to a certified copy of said final decree attached to and made a part of this plea as fully as if set out in haec verba, and marked exhibit "A."

And the defendant for an additional plea to the Second count of plaintiff's declaration says:

That the said plaintiff ought not to have and maintain its action in this behalf because prior to the commencement of this suit and on, to-wit, the 3rd, day of January, 1913, one J. R. Brown, instituted his suit on the Chancery side of the Circuit Court of Hamilton County, Florida, against this defendant and the said plaintiff herein, and against the Rome Insurance Company, and —— ——, and this defendant avers that said Circuit Court of Hamilton County, Florida, was and is a Court of general jurisdiction; that in and by said suit so instituted as aforesaid, it was claimed and alleged by the said complainant therein, among other things, that the certificate of deposit, in said count sued upon, was issued by this defendant to cover and include the proceeds of a certain note executed by the said complainant J. R. Brown, and that said note was made payable to the order of said complainant, and was procured by the false and fraudulent representations of the said Rome Insurance Company, and its Trustee, the said American Bank & Trust Company; that the proceeds of said note so procured, as aforesaid, were deposited with this defendant in its banking house in Jasper, Hamilton County, Florida, and the certificate of deposit, in said count, represents and covers the proceeds of said note so procured as aforesaid, and that such deposit has at all times since the date of the said certificate of deposit been and remains in the said banking house of this defendant at Jasper
12 aforesaid, and in and by the said suit the said complainant J. R. Brown claimed and alleged that the said deposit was created by the fraud and deceit of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and that said certificate of deposit, in this count sued upon, was likewise procured by the fraud of the said Rome Insurance Company and its Trustee, the said American Bank & Trust Company, and the said complainant in the said Chancery suit sought to have the said fund, the proceeds of said certificate of deposit, in the defendant's banking house at Jasper, aforesaid, impressed with a trust in favor of the said complainant and therein and thereby prayed, among other things, that the said certificate of deposit be decreed null and of no effect, and that the said funds be decreed to belong to the said complainant in said Chancery suit; that thereafter, to-wit, in the 14th day of July, 1914, and since the filing of the last pleadings herein, the Judge of said Circuit Court of Hamilton County, Florida, duly rendered a final decree in said Chancery suit and therein and thereby adjudged and

decreed, among other things, the proceeds of said complainant's note, to-wit, the sum of Two Hundred and Ninety-four Dollars, covered by and included in the said certificate of deposit, in this count sued upon, and held by the plaintiff herein, to be impressed with a trust in favor of the said complainant and were adjudged to belong to him, and the plaintiff herein was decreed to have no right, title, interest, claim or demand of, in and to the said proceeds or any part thereof, and this defendant was therein and thereby required and directed to pay the said proceeds over to the said complainant in said Chancery suit, and was enjoined from paying the said proceeds to the plaintiff herein or to anyone for it; and in and by said final decree, the certificate of deposit, in this count sued upon, dated the 29th day of November 1911, in so far as it covered and included the proceeds derived from said note executed by the complainant in said
13 Chancery suit, was decreed to be void and of no effect; that said final decree was duly and regularly entered and recorded in Circuit Court, Minute Docket No. 11, page 274, of the Public Records of Hamilton County, Florida, on the 14th day of July, 1914; all of which will more fully appear reference being had to a certified copy of said final decree attached to and made a part of this plea as fully as if set out in hec verba and marked exhibit "B."

CARTER & McCOLLUM,
S. S. SANDFORD,
Attorneys for Defendant.

STATE OF FLORIDA,
County of Duval:

Before me personally came Ira J. Carter, who being duly sworn deposes and says; that he is one of the attorneys of record for the defendant in the above entitled cause; that he has read the foregoing pleas and that said pleas are true.

IRA J. CARTER.

Sworn to and subscribed before me this 3rd day of August, 1914.

[SEAL.] J. T. CRAWLEY,
Notary Public.

Final Decree.

In Circuit Court, Third Judicial Circuit of Florida, in and for Hamilton County.

In Chancery.

W. S. MURROW, Complainant,

vs.

ROME INSURANCE COMPANY, a Corporation of Rome, Georgia; American Bank & Trust Company, a Corporation of Rome, Georgia, and The Bank of Jasper, of Jasper, Florida, a Corporation, Defendants.

This cause coming on this day for final hearing upon the motion of counsel for complainant for the entry of final decree upon
14 the amended bill of complaint taken as and for confessed by the said defendants and each of them, on, to-wit, the 2nd day of March, A. D. 1914, and the Court being advised in the premises, doth find as follows:

1. That service in the above entitled cause was had on the defendants, Rome Insurance Company, American Bank & Trust Company, by publication returnable to February 21st, A. D. 1913.

2. That said non-resident defendants made two motions to quash service on them and this Court made two orders, dated respectively the 14th day of March, and the 3rd day of April, A. D. 1913, denying said defendant's motions to quash service.

3. That it has been made to appear to me by certified copies of defendants' said motions to quash service, the orders of this Court denying the same, the appeal entered therefrom to the Supreme Court of Florida, the assignment of errors, and the mandate of said Supreme Court showing the affirmance of the orders made by this Court denying said motions to quash service in the case of B. F. Carter v. Rome Insurance Company, Exhibit "A," et al., that in the appeal in the last named case the said orders of this Court were affirmed by the said Supreme Court.

4. That on the 10th day of April, A. D. 1913, Solicitors for Complainant and Solicitors for Defendants, Rome Insurance Company, American Bank & Trust Company, the said Defendants named appearing only specially, entered into a stipulation and filed the same in this Court wherein it was stipulated that the proceedings in this cause should be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of said defendants to quash service in the case of B. F. Carter v. Rome Insurance
15 Company, et al., which said cause was then on file and being prosecuted in this Court, and wherein it was further stipulated

that the ultimate decision of the said appeal in the said case of B. F. Carter v. Rome Insurance Company, et al., should be decisive of the validity of the service by publication on the said defendants in this case.

5. That the said defendants and each of them failed to demur, plead to or answer the said amended bill of complaint on or before the Rule Day in March, A. D. 1914, and each of the said defendants made default therein.

6. That the clerk of this court entered a decree pro confesso against each and every of said defendants on the Rule Day in March, A. D. 1914, for failure of said defendants to file any demurrer, plea or answer to said amended bill of complaint, and that the entry of said decree pro confesso by the said clerk was regular and proper under the rules and *practice* of this Court, and that the matters of the bill are proper to be decreed consequent upon such decree pro confesso.

7. That on, to-wit, the 28th day of November, A. D. 1911, the said complainant executed his note, as alleged in said amended bill, payable to his order, for the sum of Three hundred and No 100 Dollars, and the defendant, American Bank & Trust Company, as trustee for the defendant, Rome Insurance Company, and the complainant by agreement with the defendant, The Bank of Jasper, deposited the said note of the complainant with the said defendant, The Bank of Jasper in its banking house in Hamilton County, Florida, and procured from the said defendant The Bank of Jasper, a certificate of Deposit No. 320 dated the 28th day of November, A. D. 1911, and in which said certificate was included the proceeds of the said note of the complainant; that the proceeds of the said note has at all times since the deposit thereof remained and
16 does still remain in the hands and custody of the said defendant The Bank of Jasper in its banking house in Hamilton County, Florida; that the said note was executed by the complainant in payment of shares to the capital stock of the defendant, Rome Insurance Company, which said shares were wholly worthless and without value, and was procured by the defendants, Rome Insurance Company, and the American Bank & Trust Company, as its trustee, by the false and fraudulent representation as set forth in the bill of complaint and the proceeds of complainant's said note was procured to be deposited, and the said certificate of deposit issued as including such proceeds as the results of such false and fraudulent representations so made as alleged in the bill by the representative of the said American Bank & Trust Company, as trustee, for the defendant Rome Insurance Company.

8. That the equities in this cause are with the complainant and he is entitled to the relief prayed and hereinafter decreed.

Therefore, upon consideration thereof, it is ordered, adjudged and decreed as follows:

(*a*) The said decree pro confesso entered against the said defendants and each of them on, to-wit, the Rule Day in March, A. D. 1914,

by the clerk of this Court, for want of demurrer, plea or answer, be and the same is hereby in all respects approved, ratified and confirmed.

(*b*) That the pretended contract of agreement made by the complainant with the said Rome Insurance Company and the American Bank & Trust Company, its trustee, providing for the sale and purchase of 10 shares of the capital stock of the said Rome Insurance Company, be and the same is hereby decreed to be wholly void, and of no effect, as having been procured by the fraud, deceit, covin and guile of the said Rome Insurance Company, and its trustee, the said American Bank & Trust Company.

17 (*c*) That the proceeds of complainant's said note, to-wit, Two hundred Ninety-four Dollars, covered by and included in said certificate of deposit No. 320 now held by the defendant, American Bank & Trust Company are hereby decreed to be impressed with a trust in favor of the complainant and the same are adjudged to belong to him; that the said American Bank & Trust Company is hereby declared and decreed to have no right, title, interest, claim or demand of, in and to the said proceeds of the complainant's said note or any part thereof, and the said defendant The Bank of Jasper be and it is hereby required and directed to pay the said proceeds over to the complainant.

(*d*) That the defendant The Bank of Jasper, be and it is hereby perpetually enjoined from paying out the proceeds of the said note executed by the complainant and dated as aforesaid, to the said American Bank & Trust Company or to anyone for it.

(*e*) That the certificate of deposit No. 320 insofar as it covers and includes the proceeds derived from the said note executed by the said complainant, and which certificate was issued by the said defendant The Bank of Jasper to the American Bank & Trust Company of Rome, Georgia, as trustee, dated the 28th day of November, A. D. 1911 and for the total sum of Forty-seven Hundred Four Dollars, be and the same is hereby void and of no effect.

(*f*) That the defendant, The Bank of Jasper, do pay the costs in this case to be taxed by the Clerk of this Court.

Done, ordered, adjudged and decreed at Chambers, at Jasper, Florida, this 14th day of July, A. D. 1914.

M. F. HORNE,
Judge.

18 Duly recorded in Circuit Court Minute Docket No. 11, page 287 this July 14th, 1914, public records of Hamilton County, Fla.

M. P. HUNTER,
Clerk.

[SEAL.] By G. S. FRINK,
D. C.

STATE OF FLORIDA,
Hamilton County:

I, M. P. Hunter, Clerk of the Circuit Court in and for said county, do hereby certify that the foregoing instrument is a true and correct copy of the Final Decree in the case of W. S. Murrow vs. Rome Insurance Company, et al., as the same appears in Circuit Court Minute Docket No. 11, on page 287.

Witness my hand and official seal this 21st day of July, 1914.

M. P. HUNTER,
Clerk.

[SEAL.] By G. S. FRINK,
D. C.

Final Decree.

In Circuit Court, Third Judicial Circuit of Florida, in and for Hamilton County.

In Chancery.

J. R. BROWN, Complainant,

vs.

ROME INSURANCE COMPANY, a Corporation of Rome, Georgia; American Bank & Trust Company, a Corporation, of Rome, Georgia, and The Bank of Jasper, of Jasper, Florida, a Corporation, Defendants.

Bill for Relief

This cause coming on this day for final hearing upon the action of counsel for complainant for the entry of final decree upon the
19 amended bill of complaint taken as and for confessed by the said defendants and each of them, on, to-wit, the 2nd day of March, A. D. 1914, and the Court being advised in the premises, doth find as follows:

1. That the service in the above entitled cause was had on the defendants, Rome Insurance Company, and American Bank & Trust Company, by publication returnable to February 21st, A. D. 1913.

2. That said non-resident defendants made two motions to quash service on them and this Court made two orders, dated respectively the 14th day of March, and the 3rd day of April, A. D. 1913, denying said defendants' motions to quash service.

3. That it has been made to appear to me by certified copies of defendants' said motions to quash service, the orders of this Court denying the same, the appeal entered therefrom to the Supreme Court of Florida, the assignment of errors, and the mandate of said Su-

preme Court showing the affirmance of the orders made by this Court denying said motions to quash service in the case of B. F. Carter et al., that in the appeal in the last named case the said orders of this Court were affirmed by the said Supreme Court.

4. That on the 10th day of April, A. D. 1913, Solicitors for Complainant and Solicitors for Defendants, Rome Insurance Company, American Bank & Trust Company, the said defendants named appearing only specially, entered into a stipulation and filed the same in this Court wherein it was stipulated that the proceedings in this cause should be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of said defendants to quash service in the case of B. F. Carter vs. Rome Insurance Company et al., which said cause was then on file and being
20 prosecuted in this Court, and wherein it was further stipulated that the ultimate decision of the said appeal in the said case of B. F. Carter vs. Rome Insurance Company et al., should be decisive of the validity of the service by publication on the said defendants in this case.

5. That the said defendants and each of them failed to demur, plead to or answer the said amended bill of complaint on or before the Rule Day in March, A. D. 1914, and each of the said defendants made default therein.

6. That the clerk of this Court entered a decree pro Confesso against each and every of said defendants on the Rule Day in March, A. D. 1914, for the failure of said defendants to file any demurrer, plea or answer to said amended bill of complaint, and that the entry of said decree pro confesso by the said clerk was regular and proper under the rules and practice of this Court; and that the matters of the bill are proper to be decreed consequent upon such decree pro confesso.

7. That on, to-wit, the 29th day of November, A. D. 1911, the said complainant executed his note, as alleged in said amended bill, payable to his order, for the sum of Three hundred & No/100 Dollars and the defendant, American Bank & Trust Company, as trustee, for the defendant, Rome Insurance Company, and the complainant by agreement with the defendant, The Bank of Jasper, deposited the said note of the complainant with the said defendant, The Bank of Jasper, in its banking house in Hamilton County, Florida, and procured from the said defendant, The Bank of Jasper, a certificate of deposit No. —, dated the 29th day of November, A. D. 1911, and in which said certificate was included the proceeds of the said note of the complainant; that the proceeds of the said note has at all times since the deposit thereof remained and does still
21 remain in the hands and custody of the said defendant, The Bank of Jasper, in its banking house in Hamilton County, Florida; that the said note was executed by the complainant in payment of shares of the capital stock of the defendant, Rome Insurance Company, which said shares were wholly worthless and

without value, and was procured by the defendants, Rome Insurance Company, and the American Bank & Trust Company, as its trustee, by the false and fraudulent representations as set forth in the bill of complaint and the proceeds of complainant's said note was procured to be deposited, and the said certificate of deposit issued as including such proceeds as the result of such false and fraudulent representations so made as alleged in the bill by the representative of the said American Bank & Trust Company, as trustee, for the defendant, Rome Insurance Company.

8. That the equities in this cause are with the complainant and he is entitled to the relief prayed and hereinafter decreed.

Therefore, upon consideration thereof, it is ordered, adjudged and decreed as follows:

(*a*) The said decree pro confesso entered against the said defendants and each of them, on to-wit, the Rule Day in March, A. D. 1914, by the clerk of this Court, for want of demurrer, plea or answer, be and the same is hereby in all respects approved, ratified and confirmed.

(*b*) That the pretended contract of agreement made by the complainant with the said Rome Insurance Company and the American Bank & Trust Company, its trustee, providing for the sale and purchase of 10 shares of the capital stock of the said Rome Insurance Company, be and the same is hereby decreed to be wholly void and of no effect as having been procured by the fraud, deceit, covin and guile of the said Rome Insurance Company and its trustee, the said American Bank & Trust Company.

22 (*c*) That the proceeds of complainant's said note, to-wit, the sum of Two hundred Ninety-four Dollars, covered by and included in said certificate of deposit No. — now held by the defendant, American Bank & Trust Company, are hereby decreed to be impressed with a trust in favor of the complainant and the same are adjudged to belong to him; that the said American Bank & Trust Company is hereby declared and decreed to have no right, title, interest, claim or demand of, in and to the said proceeds of the complainant's said note, or any part thereof, and the said defendant, The Bank of Jasper, be and it is hereby required and directed to pay the said proceeds over to the complainant.

(*d*) That the defendant, The Bank of Jasper, be and it is hereby perpetually enjoined from paying out the proceeds of the said note executed by the complainant and dated as aforesaid, to the said American Bank & Trust Company, or to any one for it.

(*e*) That the certificate of deposit No. — in so far as it covers and includes the proceeds derived from the said note executed by the said complainant, and which certificate was issued by the said defendant, The Bank of Jasper to the American Bank & Trust Company of Rome, Georgia, as trustee, dated the 29th day of November,

A. D. 1911, and for the sum of Two hundred Ninety-four Dollars be and the same is hereby decreed void and of no effect.

(*f*) That the defendant, The Bank of Jasper, do pay the costs in this case to be taxed by the Clerk of this Court.

Done, ordered, adjudged and decreed at Chambers, at Jasper, Florida, this 14th day of July, A. D. 1914.

M. F. HORNE,
Judge.

23 Duly recorded in Circuit Court Minute Docket No. 11, page 274, this July 14th, 1914, public records of Hamilton County, Fla.

[SEAL.] M. P. HUNTER,
Clerk.
By G. S. FRINK,
D. C.

STATE OF FLORIDA,
Hamilton County:

I, M. P. Hunter, Clerk of the Circuit Court in and for said county, do hereby certify that the foregoing instrument is a true and correct copy of the Final Decree in the case of J. R. Brown vs. Rome Insurance Company, et al., as the same appears on record in Circuit Court Minute Docket No. 11, page 274.

Witness my hand and official seal, this 21st day of July, 1914.

[SEAL.] M. P. HUNTER,
Clerk.
By G. S. FRINK,
D. C.

Demurrer to Additional Pleas.

In the District Court of the United States in and for the Southern District of Fla.

AMERICAN BANK & TRUST COMPANY, a Corporation,

vs.

THE BANK OF JASPER, a Corporation.

Comes now the plaintiff in the above entitled cause, by Kay & Doggett, its attorneys, and demurs severally to the additional pleas filed by the defendant herein on August 3rd, 1914, to the first and second counts of plaintiff's declaration because each of said pleas are severally bad in substance, and for substantial matters of law to be argued severally as to each of said pleas, the plaintiff assigns the following:

24 1. Said plea sets up no defense to the cause of action alleged in said court.

2. It appears by said plea that said Circuit Court of Hamilton County, Florida, never, at any time during the progress of said alleged chancery suit, had or obtained jurisdiction over the plaintiff herein.

3. Said chancery suit was an action in personam, in which constructive service upon a resident of a State other than that in which the suit was brought was ineffectual to give the Court jurisdiction over a person so served.

4. Said plea does not allege or show that personal service in said chancery suit was ever at any time had upon the plaintiff herein, or that said plaintiff herein ever at any time made any sort of a general appearance in said cause.

5. Said plea affirmatively shows that in said chancery suit no personal service was had upon the plaintiff herein and that the plaintiff herein at no time during the progress of said chancery suit entered any sort of a general appearance in said chancery suit.

6. Said plea does not allege or show that the plaintiff herein ever at any time waived, in any manner, shape or form, want of jurisdiction of said Court in said chancery suit over the plaintiff herein.

7. Jurisdiction could not be assumed or exercised by the Court in said chancery suit merely because the subject matter of the suit was within the power of the Court.

8. No decrees entered in said chancery suit could bind anyone not personally served with process, or who did not appear.

25 9. No decree entered in said chancery suit could effect the rights of the plaintiff herein arising out of the certificate of deposit set up in said count.

KAY & DOGGETT,
Attorneys for Plaintiff.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JOHN L. DOGGETT,
Attorney for Plaintiff.

STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary Public in and for the State of Florida at large, one Henry C. Clark, who being by me first duly sworn, deposes and says that he is of Counsel for Plaintiff in the foregoing cause, and duly authorized to make this affidavit, and that the foregoing demurrer is not interposed for the purpose of delay.

HENRY C. CLARK.

Sworn to and subscribed before me this the 5th day of September, A. D. 1914.

[SEAL.]

S. P. OWEN, JR.,
Notary Public.

Commission expires Feby. 17, 1917.

Indorsement: Demurrer to additional pleas. Filed Sept. 7, 1914. E. D. Dodge, Clerk.

26 In District Court of United States, Southern District of Florida.

AMERICAN BANK & TRUST CO.

vs.

THE BANK OF JASPER, FLA.

Comes now the defendant by its undersigned attorneys and joins in the demurrer of the plaintiff to the plea filed August 3rd, 1914, to the first and second counts of plaintiff's declaration.

CARTER & McCOLLUM,
S. S. SANDFORD,
Attorneys for Defendant.

Order of Court.

In the District Court of the United States in and for the Southern District of Florida.

AMERICAN BANK AND TRUST COMPANY

vs.

THE BANK OF JASPER.

This cause coming on to be heard upon the undisposed of demurrers herein, and the same having been submitted, and the Court being advised in the premises upon consideration thereof it is hereby ordered and adjudged:

1st. That the plaintiff's demurrers to the defendant's additional pleas filed August 3rd, 1914, to the first and second counts of plaintiff's declaration be and each of them are hereby overruled.

2nd. That the defendant's demurrers to the plaintiff's additional and fourth replication to the defendant's seventh pleas to the
27 first and second counts of plaintiff's declaration, and the defendant's demurrers to the plaintiff's additional and fifth replications to the defendant's tenth pleas to the first and second counts of plaintiff's declaration be and each of them are hereby overruled.

3rd. That the defendant's demurrers to plaintiff's third, fourth and fifth replications to defendant's ninth pleas to the first and second counts of Plaintiff's declaration be and each of them are hereby overruled.

Done and ordered this 12th day of January, A. D. 1915.

RHYDON M. CALL,
Judge.

Indorsed: Order of Court. Filed Jan. 12, 1915. E. D. Dodge, Clerk.

Motion.

In the District Court of the United States in and for the Southern District of Florida.

AMERICAN BANK AND TRUST COMPANY OF ROME, GEORGIA,

vs.

THE BANK OF JASPER, FLORIDA.

Comes now the Plaintiff in the above entitled cause by Kay & Doggett, its attorneys, and moves the Court for leave to file in said cause Replications to Defendant's Additional Pleas heretofore filed in said cause.

KAY & DOGGETT,
Attorneys for Plaintiff.

We hereby consent to the above motion, saving unto ourselves any and all exceptions or objections to the substance of said Replications.

CARTER & McCOLLUM,
Attorneys for Defendant

28 The above motion coming on to be heard and having been submitted, upon consideration thereof it is hereby ordered and adjudged that said motion be, and the same is hereby granted, and defendant is given until Rule Day in July, A. D. 1915, to plead thereto as advised.

Done and ordered this 15th day of June, A. D. 1915.

RHYDON M. CALL,
Judge.

Indorsed: Order of Court: Filed June 15, 1915. W. L. Devore, Clerk.

Replications to Additional Pleas of Defendant.

In the District Court of the United States in and for the Southern District of Florida.

AMERICAN BANK AND TRUST COMPANY OF ROME, GEORGIA,

vs.

THE BANK OF JASPER, FLORIDA.

Comes now the plaintiff in the above entitled cause, by Kay & Doggett, its attorneys, and for replication to defendant's additional plea to the first count of plaintiff's declaration, says:

That said Chancery suit in said plea mentioned was an action in personam; that no personal service in said Chancery suit was ever at any time had upon the plaintiff herein; that the plaintiff herein did not at any time or in any way make any sort of a general appearance in said Chancery suit; that the plaintiff herein did not at any time waive, in any manner, shape or form, want of jurisdiction of the Court in said Chancery suit over the plaintiff herein, that the plaintiff herein in no way appeared in said Chancery suit except only specially, solely and only to contest the pretended service
29 by publication attempted to be made in said Chancery suit upon the plaintiff herein; that a copy of the first of said motions to quash service which were filed by the plaintiff herein in said Chancery suit is hereto attached and marked "Exhibit A" and hereby made a part hereof; that upon Complainant in said Chancery suit amending his Bill of Complaint therein, the plaintiff herein filed in said Chancery suit said second motion to quash service, copy of which said second motion to quash service is attached hereto, marked "Exhibit B" and hereby made a part hereof; that upon the denial of said motions to quash service, the parties named in said Chancery suit, through their respective counsel, entered into said stipulation mentioned in said final decree, an unsigned copy of which stipulation is hereto attached, marked "Exhibit C" and hereby made a part hereof; that a copy of the complete transcript of record in said Chancery suit of B. F. Carter vs. Rome Insurance Company, et al., as the same was filed in the Supreme Court of the State of Florida, is hereto attached, marked "Exhibit D" and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit E" and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of J. H. Corbett vs. Rome Insurance Company, et al., is hereto attached marked "Exhibit F;" that a copy of the mandate of the Supreme Court of Florida in said Chancery suit of B. F. Carter, vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit G" and hereby made a part hereof; that after said opinions of said Supreme Court of Florida were an-

nounced, the plaintiff herein took no further part whatsoever in said Chancery suit of W. S. Murrow vs. Rome Insurance Company, et al., nor in said chancery suit of B. F. Carter vs. Rome Insurance Company, et al., wherefore this plaintiff says that no decree entered in said Chancery suit of W. S. Murrow vs. Rome Insurance Company, et al., could affect or take away any of the rights of the plaintiff herein, arising out of the certificate of deposit herein sued upon.

And for replication to defendant's additional plea to the second count of plaintiff's declaration, plaintiff says:

That said Chancery suit in said plea mentioned was an action in personam; that no personal service in said Chancery suit was ever at any time had upon the plaintiff herein; that the plaintiff herein did not at any time or in any way make any sort of a general appearance in said Chancery suit; that the plaintiff herein did not at any time waive, in any manner, shape or form, want of jurisdiction of the Court in said Chancery suit over the plaintiff herein; that the plaintiff herein in no way appeared in said Chancery suit except only specially, solely and only to contest the pretended service by publication attempted to be made in said Chancery suit upon the plaintiff herein; that a copy of the first of said motions to quash service which were filed by the plaintiff herein in said Chancery suit is hereto attached and marked "Exhibit H" and hereby made a part hereof; that upon Complainant in said Chancery suit amending his bill of complaint therein, the plaintiff herein filed in said Chancery suit said second motion to quash service, copy of which said second motion to quash service is attached hereto, marked "Exhibit J" and hereby made a part hereof; that upon the denial of said motions to quash service, the parties named in said Chancery suit through their respective counsel, entered into said stipulation mentioned in said final decree, an unsigned copy of which stipulation is hereto attached marked "Exhibit K" and made a part hereof; that a copy of the complete transcript of record in said Chancery suit of B. F. Carter vs. Rome Insurance Company, et al., as the same was filed in the Supreme Court of Florida, is hereto attached, marked "Exhibit D" and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of B. F.
31 Carter vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit E" and hereby made a part hereof; that a copy of the opinion of the Supreme Court of Florida in said Chancery suit of J. H. Corbett vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit F;" that a copy of the mandate of the Supreme Court of Florida in said Chancery suit of B. F. Carter vs. Rome Insurance Company, et al., is hereto attached, marked "Exhibit G" and hereby made a part hereof; that after said opinions of said Supreme Court of Florida were announced, the plaintiff herein took no further part whatsoever in said Chancery suit of J. R. Brown vs. Rome Insurance Company, et al., nor in said Chancery suit of B. F. Carter vs. Rome Insurance Company,

et al., wherefore this plaintiff says that no decree entered in said chancery suit of J. R. Brown vs. Rome Insurance Company, et al., could affect or take away any of the rights of the plaintiff herein, arising out of the certificate of deposit herein sued upon.

KAY & DOGGETT,
Attorneys for Plaintiff.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

W. S. MURROW, Complainant.

vs.

ROME INSURANCE CO., et al., Defendants.

Come now defendants, Rome Insurance Company; American Bank & Trust Company, Trustee, by Kay & Dogget, their solicitors and counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service upon the following grounds, to-wit:

1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida, and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught; and these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KEY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Soley, and Only for the Purpose of this Motion and Limiting the Same to said Purpose.

"Exhibit A."

33 *Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company.*

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

W. S. MURROW, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Come now defendants, Rome Insurance Company; American Bank & Trust Company, Trustee, by Kay & Doggett, their solicitors and counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law, *amongst* only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that — do hereby move to quash said service and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught, upon the following grounds, to-wit:

1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations not resident in Florida, and have not received personal service of process herein in the State of Florida.

3rd. Because this is an action in personam, and said defendants have not received personal service of process herein in the State of Florida.

34 4th. Because as appears upon the face of the record in this cause, legal service of process has not been had upon the said defendants.

And these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys and Solicitors.

Appearing Specially, Solely, and Only for the Purpose of this Motion and Limiting the Same to said Purposes.

"Exhibit B."

Stipulation of Counsel.

In the Circuit Court, Third Judicial Circuit, in and for Hamilton County, Florida.

W. S. MURROW

vs.

ROME INSURANCE COMPANY et al.

It is hereby stipulated and agreed by and between S. S. Sanford and Carter & McCollum, Solicitors for the complainant herein and Kay & Doggett, who have not appeared generally, but who have appeared only specially as solicitors for the defendants herein, Rome Insurance Company, American Bank & Trust Company and First National Bank of Rome, Georgia, and who are making this agreement specially, solely for the purposes herein expressed:

That proceed-s in this cause be stayed pending the prosecution of an appeal from the orders of the Court overruling the motions of the said defendants to quash service in the case of B. F. Carter vs. Rome Insurance Company, et al., which said cause is now on file and being prosecuted in this Court:

That the ultimate decision of the said appeal in the said case of B. F. Carter vs. Rome Insurance Company, shall be decisive of the validity of the service by publication on the said defendants in this case, and if the service in the said Carter case be ultimately held defective, and ordered quashed, then the service in this case, the validity of which involves identically the same legal questions as that in the Carter case, shall be held defective, and shall be quashed; and

That this stipulation of counsel shall not be considered as constituting a general appearance of the said defendants in this cause:

This agreement being signed and entered into this 10th day of April, A. D. 1913.

____ ____,
____ ____,
Solicitors for Complainants.

____ ____,
Solicitors for Defendants Rome Insurance Co., American Bank & Trust Co., and 1st National Bank of Rome, Ga., Who Have Appeared Only Specially in the said Cause.

"Exhibit C."

36 TRANSCRIPT OF RECORD OF PROCEEDINGS IN THE CIRCUIT COURT OF HAMILTON COUNTY, FLORIDA, IN THE SUIT OF B. F. CARTER, COMPLAINANT, VS. ROME INSURANCE COMPANY ET AL., DEFENDANTS, THEREIN LATELY PENDING.

* * * * * * *

On the 3rd day of January, 1913, the Complainant filed his original bill, in words and figures following:

Bill of Complaint.

In the Circuit Court of the Third Judicial Circuit of Florida in and for Hamilton County.

In Chancery.

B. F. CARTER, Complainant.

vs.

ROME INSURANCE COMPANY et al., Defendants.

Bill for Relief.

To Hon. Mallory F. Horne, Judge of the Circuit Court of the Third Judicial Circuit of Florida in and for Hamilton County, in Chancery sitting:

Your orator, B. F. Carter, a citizen and resident of Hamilton County, Florida, by his undersigned solicitors, brings this his bill of complaint against Rome Insurance Company, a corporation organized under the laws of Georgia, of Rome, in Floyd County, Georgia, American Bank & Trust Company, a corporation organized under the laws of Georgia, of Rome, in said Floyd County, Georgia, First National Bank of Rome, a corporation organized under the laws of United States, of Rome, in said Floyd County, Georgia, Bank of Jasper, a corporation organized under the laws of Florida, of
37 Jasper, in Hamilton County, Florida, defendants, and thereupon your orator would respectfully show unto your Honor, as follows:

1. That on, to-wit, about the 25 day of Nov., 1911, the defendant, Rome Insurance Company was a foreign corporation organized and existing under and by virtue of the laws of the State of Georgia, with its principal place of business at the City of Rome, in said State, and was then and there engaged in the Insurance business, and the defendant, American Bank & Trust Company, was on the date aforesaid, likewise a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its place of business at Rome, in said State of Georgia, and was engaged in the banking

business and acting as trustee for those persons and corporations desiring its services as trustee.

2. That on, to-wit, about the 25 day of Nov., 1911, the said defendant, Rome Insurance Company, was desirous of offering for sale and selling shares of the capital stock, and in order to effectuate its desires and purpose in that respect, it caused to be named as its trustee for such purpose, its co-defendant, the said American Bank and Trust Company, of Rome, Georgia, and authorized the said Trustee to offer for sale and sell to persons desiring the same, shares of the capital stock of the said Rome Insurance Company and which said shares were to be fully paid and non-accessible and of the par value of Ten Dollars ($10.00) per share, but to be sold by the said trustee at the sum of Thirty Dollars ($30.00) per share or on the ratio of Three Dollars ($3.00) to be paid for each one dollar ($1.00) par value of stock; and the said Rome Insurance Co., and the American Bank & Trust Company, in order to effectuate the sale of the capital stock of the Rome Insurance Company, sent their agent or representative into Hamilton County, Florida, where your orator resided and still resides, and there solicited your orator to purchase
38 through the said trustee, certificates of shares in the capital stock of the said Rome Insurance Company.

3. And your orator further alleges that the said Rome Insurance Company and the American Bank & Trust Company, of Rome, Georgia, by and through their said agent or representative then and there to-wit, about the 25 day of November, 1911, and in Hamilton County, Florida, approached your orator and opened up negotiations with him for the purpose of inducing your orator to purchase shares of said capital stock of the Rome Insurance Company, and then and there falsely and fraudulently and with the intent and purpose to deceive and defraud your orator, represented to your orator that the shares of the capital stock in the said Rome Insurance Company so offered for sale by the said Rome Insurance Company and the American Bank and Trust Company, as Trustee, was of great value, to-wit; of the value of Three dollars ($3.00) for each one dollar ($1.00) of said capital stock; that your orator was then and there wholly ignorant and uninformed as to the value of said stock, of which ignorance and lack of information the said Rome Insurance Company and American Bank and Trust Company, trustee, knew, or ought to have known, and your orator was wholly dependent upon said Insurance Company and its trustee for information with respect to said capital stock, and he believed and relied upon the statements and representations so made to him as aforesaid, with respect to the value of said stock, that the said Insurance Company and its said trustee, further falsely and fraudulently and with the intention and purpose to deceive and defraud your orator, then and there represented to him that the said Rome Insurance Company was a solvent corporation and possessed of assets in value far in excess of its liabilities, and your orator relied upon and placed confidence in said false representations; and your orator charges that all of said repre-

sentations aforesaid, so made to him by the said Insurance Company and its trustee, were then and there wholly false and untrue,
39 and the said Insurance Company and its said trustee well knew the same to be false and untrue, and intended by said false and fraudulent representations to deceive and defraud your orator, and did deceive and defraud him, and by means thereof your orator was induced to purchase and agree to pay for and did purchase and agree to pay for, in reliance upon such false and fraudulent representations 10 shares of the capital stock of said Rome Insurance Company, on the basis of Three Dollars ($3.00) to be paid for each One Dollar ($1.00) face value of said capital stock, and amounting in the aggregate to the sum of 300 dollars so agreed to be paid for by your orator for such capital stock. And your orator further alleges that certificates of shares in capital stock of the said Rome Insurance Company were issued to your orator and your orator alleges that said capital stock so sold to him was then and there wholly without value and was not then and there worth Three Dollars ($3.00) or any other sum, for each One Dollar ($1.00) of the face value thereof, and the said Rome Insurance Company, was at that time hopelessly involved and embar-assed financially and was then wholly insolvent, although your orator was not at that time aware of the worthlessness of the capital stock of the Rome Insurance Company, or aware of its insolvency; that both the said Rome Insurance Company and its said trustee, then knew or ought to have known that the capital stock of said Insurance Company was worthless, and the said Company practically insolvent.

4. And your Orator further alleges that by an agreement entered into between your orator and American Bank and Trust Company as trustee, for the said Rome Insurance Company, and its co-defendant, the said Bank of Jasper, *is* [it] was then and there to-wit: about the 25 day of November, 1911, and in Hamilton County, Florida, agreed that your orator as consideration to be paid for said shares of the capital stock of the Rome Insurance Company should execute a note payable to orator's order, for the sum of $300 dollars,
40 and deposit the same in the said Bank of Jasper, which said Bank was to discount said note and issue a certificate of deposit for the proceeds thereof, and said certificate of deposit to be turned over to the American Bank and Trust Company, of Rome, Georgia, as such trustee, and payable at future date; that in pursuance of the said tri-partite agreement, your orator executed said note and the American Bank & Trust Company procured a certificate of deposit to be issued for the proceeds thereof, and which proceeds were included in certificate No. 319 of said bank, dated at Jasper, Florida, on the 25 day of November, 1911, and wherein it was certified by W. S. Murrow, as Cashier of the said Bank of Jasper, that said American Bank and Trust Company of Rome, as trustee, had deposited in said bank $1,558.20 payable to the order of itself on return of said certificates properly indorsed, with interest at four per cent per annum, compounded quarterly, and said certificate payable on or after November 25, 1912; that said certificate was delivered

by said Bank of Jasper, to the agent of Rome Insurance Company and American Bank & Trust Company. Your orator further alleges that the negotiations and agreement made with him for the purchase of said shares in the capital stock *in* the Rome Insurance Company, and the method by which the same should be paid for, including the execution of said note by your orator and the issuance of a certificate of deposit by the said Bank of Jasper, were all discussed and agreed upon by your orator, American Bank and Trust Company, as trustee, as aforesaid, and the said Bank of Jasper, Florida, in advance of and at the time of said purchase and the same were contemporaneous and formed but one act and agreement.

5. And your orator would further allege that the note executed by him and referred to in the preceding paragraph is now in the hands of the said Bank of Jasper, Florida, and the certificate of deposit is in the hands of said defendant, First National Bank
41 of Rome, by virtue of a pretended assignment or transfer thereof claimed to have been made by said American Bank & Trust Company, yet the said note is outstanding in the hands of the said Bank of Jasper, and the Bank has refused to deliver up the same to your orator for cancellation; that by reason of the false and fraudulent representations so made to your orator by the Rome Insurance Company, and The American Bank & Trust Company, Trustee, through their agent and representative, mention whereof is made in the third paragraph of this bill, the purchase of said shares of stock in the said Rome Insurance Co., by your orator and the agreement therefore, is and ought to be decreed of no force and effect, as having been procured by defraud, deceit, covin and guile of the said Insurance Company, and its Trustee, American Bank & Trust Company, and the note of your orator now held by the said Bank of Jasper, is and ought to be decreed to be wholly void, and of no effect, and the same should be delivered up to your orator.

6. And your orator would further allege that the pretended contract for the sale and purchase of said shares of stock in the said Rome Insurance Company, with your orator, made by or on behalf of the said Rome Insurance Company, and the said American Bank & Trust Company, is and ought to be decreed to be void because your orator alleges the truth to be that the said Rome Insurance Company and the said American Bank & Trust Company were and each of them was at the time of making the aforesaid contract with your orator and the execution of said note and the certificate of deposit, a foreign corporation and organized by and under the laws of the State of Georgia, and by virtue of Section One (1) of Chapter 5717 of the laws of Florida, neither of said corporations were authorized to transact business or to acquire, hold or dispose of property in the State of Florida until it shall have filed in the office of the Secretary of State, a duly authenticated copy of its charter or articles of incorporation, and shall have received from said Secretary
42 of State a permit to transact business in Florida; and your orator alleges that at the time of the making of the pretended contract of sale and purchase of shares of the capital stock of the

said Rome Insurance Company by your orator, as hereinbefore alleged, and at the time of the execution of said note and the issuance of said certificate of deposit, neither the said Rome Insurance Company or the said American Bank & Trust Company, had filed in the office of the Secretary of State a duly authenticated copy of its charter or articles of incorporation nor had they or either of them received from the Secretary of State a permit to transact business in this State.

7. And your orator further alleges that he is ready, willing and able and hereby offers to surrender to the said Rome Insurance Company, or its Trustee, the American Bank & Trust Company, the certificate of the shares of stock issued to him and stands ready and offers to comply with such order and decree of your Honor with the respect to the surrender of said certificates as may be entered in this suit.

Inasmuch as your orator is without adequate remedy except in equity, he prays as follows:

(*a*) That your Honor take jurisdiction of the parties and subject matter of this bill, and grant to your orator the relief hereinafter prayed.

(*b*) That the certificate of deposit, insofar as the same covers and includes the proceeds derived from the note executed by your orator as hereinbefore alleged, and which certificate was issued by the Bank of Jasper, Florida, to the American Bank & Trust Company of Rome, Georgia, as Trustee, dated 25 day of November, 1911, and for the total sum of $1,558.20 dollars, to be decreed to be void and

43 (*c*) That the note ex-cuted by your orator payable to his order for the sum of 300 dollars, dated 25 day of November, 1911, and delivered to the Bank of Jasper, Florida, be decreed to be void and of no effect and the said bank be required to cancel and surrender same to your orator.

(*d*) That the pretended contract of assignment made by your orator with the said Rome Insurance Company and the American Bank and Trust Company, as Trustee, providing for the sale and purchase of ten shares of the capital stock of the said Rome Insurance Company be decreed to be wholly void and of no effect.

(*e*) That the American Bank and Trust Company, Trustee as aforesaid, and the Rome Insurance Company, and each of them, be enjoined and restrained by order of this Court from instituting any suit against your orator on account of the said pretended contract of sale, and purchase of shares of stock in the Rome Insurance Company.

(*f*) That the Bank of Jasper, Florida, be restrained by order of this Court from instituting any suit or action to recover on account of the said note executed by your orator, dated 25 day of November, 1911, and now held by the said Bank of Jasper, Florida.

(*g*) That the said injunction hereinbefore prayed for be made preliminarily and temporary until the further order of the Court, and upon final hearing that the same may be made perpetual.

(*h*) That your orator have such other, further and general relief in the premises as the equities of his case may require and to your Honor may seem meet and proper.

And may it please your Honor to grant unto your orator the State's writ of subpœna in Chancery, issuing out of and
44 under the seal of this Court, and directed to the said defendants, Rome Insurance Company, a corporation under the laws of Georgia; First National Bank of Rome, Georgia, a corporation under the laws of the United States, and Bank of Jasper, a corporation under the laws of Florida, directing and commanding them and each of them to be and *and* appear *for* this Honorable Court at a time and place to be therein designated and under a certain penalty to be therein stipulated, then and there true, perfect and complete answer make, (but not under oath, the oath to said answers being hereby specifically waived) to all and singular the allegations in this bill contained, and to stand to abide by and perform the orders and decree of your Honor in the premises.

And your orator will ever pray, etc.

CARTER & McCOLLUM.

STATE OF FLORIDA,
County of ——, *ss:*

Before me personally appeared —— ——, who being duly sworn, deposes and says that affiant is the complainant in the above entitled cause and has read the foregoing bill and knows the contents thereof, and that the same is true.

B. F. CARTER.

Sworn to and subscribed before me this 3 day of Jan., A. D. 1913.

J. B. WETHERINGTON,
[SEAL.] *C. C. C.*

45 On the 3rd day of January, 1918, complainant filed an affidavit in said case, in words and figures as follows:

In Circuit Court, Hamilton County, Florida.

In Chancery.

B. F. CARTER, Complainant,

vs.

ROME INSURANCE COMPANY et als., Defendants.

Bill for Relief.

STATE OF FLORIDA,
Hamilton County:

Before me personally appeared B. F. Carter, who being duly sworn, on oath says: That affiant is the Complainant in the above entitled cause; that the Defendant, Rome Insurance Company, is a corporation, organized and existing under and by virtue of the laws of Georgia, with its principal office and place of business in the City of Rome, in Floyd County, State of Georgia; and the defendant, American Bank & Trust Company, is a corporation organized and existing under and by virtue of the laws of Georgia, with its principal office and place of business in the City of Rome, in County of Floyd, State of Georgia; and the defendant, First National Bank of Rome, Georgia, is a corporation organized and existing under and by virtue of the laws of the United States with its principal office and place of business in the City of Rome, in Floyd County, State of Georgia; that neither of said corporations is a resident of or domiciled in the State of Florida; that there is no person in the State of Florida, the service of a Subpœna upon whom would bind such defendants, or either of them.

B. F. CARTER.

Sworn to and subscribed before me this the 3 day of Jan., A. D. 1913.

J. B. WETHERINGTON,
[SEAL.] *Clerk Ct. Ct.*

46 On the 3rd day of January, 1914, the Clerk of the Court issued an order of publication, directed to defendants, — was as follows:

To Rome Insurance Company, a corporation under the laws of Georgia; American Bank & Trust Company, a corporation under the laws of Georgia, Trustee, of Rome, Georgia, and to The First National Bank of Rome, Ga., a corporation under the laws of the United States:

It appearing from affidavit accompanying Bill of Complaint filed against you by B. F. Carter, in the Circuit Court of Hamilton County, Florida, in Chancery, on the 3rd day of January, 1913, that you,

and each of you, are non-residents of the State of Florida, and are residents of Rome, Georgia. It is hereby ordered that you and each of you do appear to the bill of complaint on the 21st day of February, A. D. 1913, at the Clerk's office of the said Circuit Court in Jasper, Florida.

It is further ordered that this notice be published in the Jasper News, a weekly newspaper published in Jasper, Hamilton County, Florida, once each week for four successive weeks.

Done and ordered this 3rd day of January, A. D. 1913.

J. B. WETHERINGTON,
[SEAL.] *Clerk Circuit Court.*

47 On the 20th day of February, 1913, the defendants filed Special appearance and motion to quash service by publication, which was as follows:

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

In the Circuit Court of Fla., Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Comes now defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay & Doggett, their solicitors and counsel and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service upon the following grounds, to-wit:

1st. Because on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida, and to vacate and hold said pretended and attempted service by publication upon these defendants to
48 be for naught; and these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein or answer hereto, because of the many defects in said pre-

tended service by reason of which no legal service has been had upon these said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service or process upon them.

KAY & DOGGET,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to said Purposes.

On the 25th day of February, 1913, the Foreman of The Jasper News, the newspaper in which notice of publication was made, filed an affidavit setting up proof of publication thereof.

On the 25th day of February, 1913, the Clerk of the Circuit Court made and filed a certificate setting up therein that order of publication directed to defendants — was made, published, posted and mailed, in accordance with law.

On the 14th day of March, 1913, the Court made an Order allowing the Complainant to file an amended bill, and overruling the motion of defendants under original bill to quash service had upon them by publication, which said order is in words and figures as follows:

49 In Circuit Court, Third Judicial Circuit of the State of Florida, in and for Hamilton County.

B. F. CARTER

vs.

ROME INSURANCE COMPANY, AMERICAN BANK & TRUST CO., Trustee, THE BANK OF JASPER.

Bill for Relief.

This cause came on to be heard upon motion of defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, to quash and set aside service by publication, insofar as same relates to said defendant, upon notice, and pending the argument of counsel, upon such motion, the complainant made his motion to be allowed to file an amended bill, and upon the consideration, it is ordered and decreed by the Court:

1st. That Complainant's said motion to be allowed to file and amended bill of complaint is hereby granted, and the complainant is hereby allowed ten days in which to file such amended bill.

2nd. That said defendants' said motion to quash and set aside the service by publication as the same appears of record in this proceeding be, and the same is hereby overruled and the defendants are allowed thirty days from this date from which to further plead, proceed, answer or demur.

This March 14, A. D. 1913.

(Signed) M. F. HORNE,
Judge Circuit Court, Hamilton County, Fla.

Duly recorded in Circuit Court Minute Docket No. 11, page 117, this March 14, A. D. 1913.

[SEAL.] M. P. HUNTER,
Clerk.
By G. S. FRINK,
D. C.

50 On the 24th day of March, 1913, Complainant filed his amended bill, which is in words and figures as follows:

Amended Bill of Complaint.

In the Circuit Court of the Third Judicial Circuit of Florida in and for Hamilton County.

In Chancery.

B. F. CARTER, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Bill for Relief.

To the Honorable Mallory F. Horne, Judge of the Circuit Court of the Third Judicial Circuit of Florida County in and for Hamilton County, in Chancery sitting:

Your orator, B. F. Carter, a citizen and resident of Hamilton County, Florida, by his undersigned solicitors, by leave of the Court first had and obtained, brings this his bill of complaint against Rome Insurance Company and American Bank & Trust Company, both corporations organized under the laws of Georgia, and both of Rome, Georgia, First National Bank of Rome, a corporation under the laws of the United States, of Rome, Georgia, and the Bank of Jasper, a corporation under the laws of Florida, of Jasper, Florida, defendants, and thereupon your orator would respectfully show unto your Honor, as follows:

1st. That on, to-wit, about the 25 day of Nov., 1911, the defendant Rome Insurance Company was a foreign corporation organized and existing under and by virtue of the laws of the State of Georgia, with its principal place of business at the City of Rome, in said State, and was then and there engaged in the Insurance business, and the defendant, American Bank & Trust Company
51 was on the date aforesaid likewise a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its place of business at Rome, in said State of Georgia, and was engaged in the banking business and acting as trustee for those persons and corporations desiring its services as trustee.

2. That on, to-wit about the 25 day of November, 1911, the said defendant Rome Insurance Company was desirous of offering for sale and selling shares of the capital stock, and in order to effectuate its desire and purpose in that respect it caused to be named as its trustee for such purpose, its co-defendant, the said American Bank & Trust Company, of Rome, Georgia, and authorized the said trustee to offer for sale and sell to persons desiring the same, shares of the capital stock of the said Rome Insurance Company, and which said shares were to be fully paid and non-accessible and of the par value of ten dollars ($10.00) per share, but to be sold by the said trustee at the sum of ($30.00) per share, or on the ratio of $3.00 to be paid for each one dollar ($1.00) par value of stock; and the said Rome Insurance Company and the American Bank & Trust Company in order to effectuate the sale of the capital stock of said Rome Insurance Co., sent their agent or representative into Hamilton County, Florida, where your orator resided and still resides and there solicited your orator to purchase through the said trustee certificates of shares in the capital stock of the said Rome Insurance Company.

3. And your orator further alleges that the said Rome Insurance Company and the American Bank & Trust Company of Rome, Georgia, by and through their said agent or representative, then and there, to-wit, about the 25 day of November, 1911, and in Hamilton County, Florida, approached your orator and opened up negotiations with him for the purpose of inducing your orator to purchase shares of the capital stock of the Rome Insurance Company and then and there falsely and fraudulently and with
52 the intent and purpose to deceive and defraud your orator, represented to your orator, that the shares of the capital stock in the said Rome Insurance Company so offered for sale by the said Rome Insurance Company and the American Bank & Trust Company as Trustee was of great value, to-wit, of the value of three dollars ($3.00) for each one dollar ($1.00) of said capital stock, that your orator was then and there wholly ignorant and uninformed as to the value of said stock, of which ignorance and lack of information the said Rome Insurance Company and American Bank and Trust Company, trustee, knew or ought to have known, and your orator was wholly dependent upon said Insurance Company and its trustee for information with respect to said capital stock, and he believed and relied upon the statements and representations so made to him, as aforesaid, with respect to the value of said stock; that the said Insurance Company, and its said trustee, further falsely and fraudulently and with the intention and purpose to deceive and defraud your orator, then and there represented to him that the said Rome Insurance Company was a solvent corporation and possessed of assets in value far in excess of its liabilities and your orator relied upon and placed confidence in said false representations; and your orator charges that all of said representations aforesaid, so made to him by the said Insurance Company and its trustee, were then and there wholly false

and untrue, and the said Rome Insurance Company and its said trustee well knew the same to be false and untrue, and intended by said false and fraudulent representations to deceive and defraud your orator, and did deceive and defraud him, and by means thereof your orator was induced to purchase and agree to pay for and did purchase and agree to pay for, in reliance upon such false and fraudulent representations 10 shares of the capital stock of said Rome Insurance Company, on the basis of Three Dollars ($3.00) to be paid for each One Dollar ($1.00) face value
53 of said capital stock, and amounting in the aggregate to the sum of 300 dollars so agreed to be paid for by your orator for such capital stock. And your orator further alleges that certificates of shares in capital stock of the said Rome Insurance Company were issued to your orator, and your orator alleges that said capital stock so sold to him was then and there wholly without value and was not then and there worth Three Dollars ($3.00) or any other sum, for each one dollar ($1.00) of the face value thereof, and the said Rome Insurance Company was at that time hopelessly involved and embarrassed financially and was then wholly insolvent, although your orator was not at that time aware of the worthlessness of the capital stock of the Rome Insurance Company, or aware of its insolvency; that both the said Rome Insurance Company and its said trustee, then knew or ought to have known that the capital stock of said Insurance Company was worthless and the said company practically insolvent.

4. And your orator further alleges that by an agreement entered into between your orator and American Bank & Trust Company, as Trustee, for the said Rome Insurance Company and its co-defendants, the said Bank of Jasper, it was then and there, to wit, about the 25 day of November, 1911, and in Hamilton County, Florida, agreed that your orator as consideration to be paid for said shares of the capital stock of the Rome Insurance Company, should execute a note payable to orator's order, for the sum of $300.00, and deposit the same in the said Bank of Jasper, which said bank was to discount said note and issue a certificate of deposit for the proceeds thereof, and said certificate of deposit to be turned over to the American Bank & Trust Company of Rome, Georgia, as such Trustee, and payable at future date; that in pursuant- of the said tri-partite agreement, your orator executed said note and the American Bank & Trust Company and your orator procured a certificate of deposit to be issued for the proceeds thereof, and which proceeds were
54 included in certificate number 319, of the said bank, dated at Jasper, Florida, on the 25th day of November, 1911, and wherein it was certified by W. S. Murrow, as Cashier of the said Bank of Jasper, that said American Bank & Trust Company, as Trustee, had deposited in the said bank, $1,558.26 *dollars*, payable to the orders of itself on return of said certificate properly indorsed, with interest at four per cent per annum, compounded quarterly, and said certificate payable on or after November 25th, 1912; that said certificate was delivered by said Bank of Jasper to the Agent

of Rome Insurance Company and American Bank & Trust Company. Your orator further alleges that in negotiations and agreement with him for the purchase of said shares of the capital stock in the Rome Insurance Company, and the method by which the same should be paid for, including the execution of said note by your orator and the issuance of a certificate of deposit by the said Bank of Jasper, were all discussed and agreed upon by your orator, American Bank & Trust Company, as Trustee, as aforesaid, and the said Bank of Jasper, Florida, in advance of and at the time of said purchase, and the same were contemporaneous and formed but one act and agreement.

5. And your orator would further allege that the note executed by him and referred to in the preceding paragraph is now in the hands of the said Bank of Jasper, Florida, and the certificates of deposit is in the hands of First National Bank of Rome, by virtue of a pretended assignment and transfer thereof, yet the said note is outstanding in the hands of the said bank, and the bank has refused to deliver the same to your orator for cancellation and your orator alleges that the proceeds of said note, to wit; the sum of $— is now in the custody of the said Bank of Jasper, in its banking house in Jasper, Hamilton County, Florida, and has so remained in the custody of said bank since it was deposited therein,
55 and the defendant First National Bank of Rome has demanded and is now demanding of the said bank that it pay over the same to the said defendant, and has claimed and is now claiming and asserting the right thereto, and has claimed and is now claiming that the said proceeds so deposited as aforesaid belongs to said defendant, and orator fears and believes that if said proceeds are paid over to said defendant, they will be removed beyond the jurisdiction of said Court and out of the State of Florida; that by reason of the false, fraudulent representations so made to your orator by the Rome Insurance Company, and the American Bank & Trust Company, Trustee, through their agent and representative, mention whereof is made in the third paragraph of this bill, the purchase of said shares of stock in the said Rome Insurance Company by your orator and the agreement therefore, is and ought to be decreed of no force and effect, as having been purchased by the fraud, deceit, covin and guile of the said Insurance Company and its trustee, American Bank & Trust Company, and the note of your orator now held by the said bank of Jasper, is and ought to be decreed to be wholly void, and of no effect, and the same should be delivered up to your orator, and your orator further alleges that under the circumstances disclosed by the allegations of this bill, the proceeds of said note in the hands of the said Bank of Jasper, defendant, as aforesaid, should be decreed not to belong to the holder of the said certificate of deposit, on account of the said deposit having been induced and procured to be made by this false and fraudulent representations of the said Rome Insurance Company, and the American Bank & Trust Company, as herein set forth and alleged in the event that the note executed by your orator and now

in the hands of the said Bank of Jasper, defendant, should not be held void, under chapter 5717 of the laws of the Florida, then the funds now in the hands of the defendant, Bank of Jasper, as the proceeds of said note, should be decreed to be impressed with
56 a trust in favor of your orator and to belong to him.

6. And your orator would further allege that the pretended contract for the sale and purchase of the said shares of stock in the said Rome Insurance Company, with your orator, made by or on behalf of the said Rome Insurance Company and the said American Bank & Trust Company is and ought to be decreed to be void, because your orator alleges the truth to be that the said Rome Insurance Company and the said American Bank & Trust Company were and each of them was, at the time of making the aforesaid contract with your orator and the execution of said note and the certificate of deposit a foreign corporation and organized by and under the laws of the State of Georgia, and by virtue of Section 1, Chapter *of* 5717 of the Laws of Florida, neither of said corporations were authorized to transact business or to acquire, hold or dispose of property in the State of Florida until it shall have filed in the office of the Secretary of State, a duly authenticated copy of its charter or articles of incorporation, and shall have received from said Secretary of State a permit to transact business in Florida, and your orator alleges that at the time of the making of the pretended contract of sale and purchases of shares of the capital stock of the said Rome Insurance Company by your orator as hereinbefore alleged, and at the time of the execution of said note and the issuance of said certificate of deposit, neither the said Rome Insurance Company, or the said American Bank & Trust Company, had filed in the office of Secretary of State a duly authenticated copy of its charter or articles of incorporation nor had they or either of them received from the Secretary of State a permit to transact business in this State.

7. And your orator alleges that he is ready, willing and able and hereby offers to surrender to the said Rome Insurance Com-
57 pany or its Trustee, the American Bank & Trust Company the certificates of shares of stock issued to him and stands ready and offers to comply with such order and decree of your Honor with respect to the surrender of said certificates as may be entered in this suit.

Inasmuch as your orator is without adequate remedy except in equity, he prays as follows:

(*a*) That your Honor take jurisdiction of the parties and subject matters of this bill, and grant to your orator the relief hereinafter prayed.

(*b*) That the certificate of deposit insofar as the same covers and includes the proceeds derived from the note executed by your orator as hereinbefore alleged, and which certificate was issued by the Bank of Jasper, Florida, to the American Bank & Trust Com-

pany of Rome, Georgia, as Trustee, dated the 25 day of November, 1911, and for the total sum of $1,558.20 *dollars*, be decreed to be void, and,

(*c*) That the note executed by your orator payable to his order for the sum of $300.00, dated the 25 day of November, 1911, and delivered to the Bank of Jasper, Florida, be decreed to be void, and of no effect, and the said bank be required to cancel and surrender the same to your orator,

(*d*) That the pretended contract of agreement made by your orator with the said Rome Insurance Company and the American Bank & Trust Company, its trustee, providing for the sale and purchase of ten shares of the capital stock of the said Insurance Company, be decreed to be wholly void, and of no effect.

(*e*) That the American Bank & Trust Company, Trustee, as aforesaid and the Rome Insurance Company, and each of
58 them, be enjoined and restrained by order of this Court from instituting any suit against your orator on account of the said pretended contract of sales and purchases of shares of stock in the Rome Insurance Company.

(*f*) That the Bank of Jasper, Florida, be restrained by order of this Court from instituting any suit or action to recover on account of the said note executed by your orator, dated the 25th day of November, 1911, and now held by the said Bank of Jasper, Florida.

(*g*) That the said Bank of Jasper, defendant, be restrained and enjoined from paying out of the proceeds of the note executed by your orator dated the 25th day of November, 1911, to the defendant, First National Bank of Rome, or any one for it, and that the defendant First National Bank of Rome, be restrained and enjoined from withdrawing the said proceeds or any part thereof from the said Bank of Jasper, and that said First National Bank of Rome be decreed not to have any right or interest in said proceeds or any part thereof.

(*h*) That in the event the note so executed by your orator shall be held to have been void by virtue of Chapter 5717 of the laws of Florida, then that the proceeds arising therefrom be decreed to be impressed with a trust in favor of your orator and to belong to him and the Bank of Jasper be required to pay the same over to your orator.

(*i*) That the said injunction hereinbefore prayed for be made preliminarily and temporary until the further order of the Court, and upon final hearing that the same may be made perpetual.

(*j*) That your orator have such other, further and general relief in the premises as the equity of his case may require and to your Honor may seem meet and proper.

59 And may it please Your Honor to grant unto your orator the State's writ of subpœna in Chancery, issuing out of and

under the seal of this Court and directed to the said defendants, Rome Insurance Company, a corporation of Rome, Georgia, American Bank & Trust Company, a corporation of Rome, Georgia, First National Bank of Rome, Georgia, and the Bank of Jasper, a corporation of Jasper, Florida, directing and commanding them and each of them to be and appear before this Honorable Court at a time and place to be therein designated and under a certain penalty to be herein stipulated, then and there true, perfect and complete answer make (but not under oath, the oath to said answers being hereby specifically waived) to all and singular the allegations in this bill contained, and to stand to abide by and perform the orders of decree of your Honor in the premises.

S. S. SANDFORD,
CARTER & McCOLLUM,
Of Counsel & Sols. for Complt.

STATE OF FLORIDA,
County of ——, ss:

Before me personally appeared B. F. Carter, who being duly sworn, deposes and says that affiant is the complainant in the above entitled cause and has read the foregoing bill and knows the contents thereof, and that the same is true.

B. F. CARTER.

Sworn to and subscribed before me this the 24th day of March, A. D. 1913.

[SEAL.]

M. P. HUNTER,
Clerk of Circuit Court.

60 On the 3rd day of April, 1913, defendants filed special appearance and motion to quash service under amended bill, which in words and figures is as follows:

Special Appearance to Quash Pretended Service by Publication on the Rome Insurance Co., American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER, Complainant.

vs.

ROME INSURANCE COMPANY et al., Defendants.

Come now the defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay & Doggett, their solicitors and counsel and not ap-

pearing generally, but appearing specially, solely and only, and limiting this appearance to what in contemplation of law amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service, and to vacate and hold said pretended and attempted service by publication upon the defendants to be for naught, upon the following grounds, to-wit:

1st. Because on account of the attempted and pretended service by publication on, the Court does not acquire jurisdiction of said defendants.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida, and have not received personal service of process herein in the State of Florida.

61 3rd. Because this is an action in personam, and said defendants have not received personal service of process herein in the State of Florida.

4th. Because as appears upon the face of the record in this cause, legal service of process has not been had upon the said defendants.

And these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein or answer hereto, because of the many defects in said pretended service, by reasons of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process of service upon them.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to Said Purposes.

On the 5th day of April, 1913, the Court made an order overruling motion of defendants, under the amended bill, to quash the service, which order is as follows:

Motion to Quash.

In Circuit Court in and for Hamilton County, Florida, in Chancery Sitting.

B. F. CARTER

VS.

ROME INSURANCE CO. et al.

This cause came on to be heard on this day upon motion of
62 the defendant herein to quash service and was argued by counsel for complainants and defendants, and the Court being

advised in the premises, it is upon consideration, ordered and adjudged that said motion to quash service be and the same is hereby overruled, and defendants allowed thirty days from this date in which to plead, answer or demur as they may be advised and complainant allowed ten days thereafter in which to rely as he may be advised.

Done, ordered in vacation at Jasper, Florida, this 3rd day of April, A. D. 1913.

M. F. HORNE,
Judge.

Duly recorded in Circuit Court Minute Docket No. 11, page 130, this April 5th, 1913.

[SEAL.]

M. P. HUNTER,
Clerk.

By G. S. FRINK,
D. C.

On the 10th day of April, 1913, entry of appeal was filed, which said entry is as follows:

Entry of Appeal.

In the Circuit Court, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Come now defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and the First National Bank of Rome, Georgia, by Kay & Doggett, their solicitors and counsel, and not appearing generally but appearing specially, solely and only and limiting the appearing to what, in contemplation of law, amounts only and solely to a special appearance, enter their appeal to the Supreme Court of Florida from the order and decree of the Circuit
63 Court of Hamilton County, Florida, in Chancery, made and entered on the 14th day of March, A. D. 1913, overruling the motion of the said defendants, filed under the original bill of complaint herein, to quash the pretended service by publication attempted to be had herein on the said defendants, the said defendants having appeared specially in the said Circuit Court of Hamilton County, under complainant's original bill herein, solely and only for the purpose of moving the Court to quash and set aside the said attempted and pretended service.

And the said defendants not appearing generally but appearing specially, as aforesaid, enter their further appeal to the Supreme

Court of Florida from a second order and decree of the said Circuit Court of Hamilton County, Florida, in chancery made and entered on the 3rd day of April, A. D. 1913, overruling the motion of the said defendants filed under the amended bill of complaint herein to quash the pretended service by publication attempted to be had herein on the said defendants, the said defendants having appeared specially in the said Circuit Court of Hamilton County, under complainant's amended bill herein, solely and only for the purpose of moving the Court to quash and set aside the said attempted and pretended service. And the said appeals are made returnable to the second Tuesday of June, A. D. 1913, the same being the tenth day of the said month.

Notice is hereby given to the complainant, B. F. Carter, of the taking and entry of said appeals, and the Clerk of the said Circuit Court is hereby directed to forthwith enter and record this entry and motion of appeal in the chancery order book of the said Circuit Court as provided by law.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the
Purpose of Appealing from said Orders.

64 Duly recorded in Chancery Order Book No. 3, page 249 this 10th day of April, A. D. 1913.

[SEAL.]

M. P. HUNTER,
Clerk.

By G. S. FRINK,
D. C.

Application for Supersedeas.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

Come now the defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay & Doggett, their Solicitors and Counsel, and not appearing generally, but appearing specially, solely and only and limiting this appearance to what, in contemplation of law, amounts only and solely to a special appearance, apply to the said Court for an order granting and fixing the terms of a supersedeas on the appeal of said defendants heretofore entered and recorded in said case, on the 10th day of April, A. D. 1913.

And further that said order shall operate as of and from the said date of said entry of appeal.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the
Purpose of Said Appeal.

65 *Notice to Solicitors for Complainant of Application for Supersedeas.*

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

To Messrs. S. S. Sandford and Carter & McCollum, solicitors for complainant herein:

You will please take notice that on the 19th day of April, A. D. 1913, or as soon thereafter as Counsel can be heard we shall apply to the Honorable M. F. Horne, Judge of said Court at his office in Jasper, Florida, for an order granting the foregoing application for a supersedeas.

KAY & DOGGETT,
Attorneys and Solicitors for Defendants
Rome Insurance Company, American Bank
& Trust Company, Trustee, and First National
Bank of Rome, Georgia, Appearing Only and
Solely for the Purpose of This Appeal.

We, S. S. Sandford, and Carter & McCollum, Solicitors for the above named Complainant, do hereby acknowledge the receipt of a copy of the foregoing application of notice this the 12th day of April, A. D. 1913. We agree that this notice shall in no sense operate as a general appearance in the above cause.

S. S. SANDFORD,
CARTER & McCOLLUM,
Solicitors for Complainant.

66 *Order Granting Supersedeas.*

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

This cause coming on to be heard upon the foregoing application of the defendant, Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia, for an order granting and fixing the terms of a supersedeas on appeal:

And the Court having duly inspected the records herein and it appearing that the said defendants have taken and entered their appeal to the Supreme Court of Florida, from an order and decree of this Court made on the 14th day of March, 1913, overruling the said defendants' motion to quash service under the original bill herein filed; that the said defendants have taken and entered their further appeal from an order and decree of this Court made on the 3rd day of April, 1913, overruling the said defendants' motion to quash service under the amended bill herein filed, that these said appeals are made returnable to a day more than thirty and not more than ninety days from the date of the recording of the said appeals, to-wit: the second Tuesday of June, A. D. 1913, the same being the tenth day of said month.

It is therefore ordered, adjudged and decreed that the said appeals operate as a supersedeas as of and from the said 10th day of April, 1913, and that all proceedings herein be stayed pending said appeals and until the final disposition thereof upon the giving by the said defendants of a bond in terms as provided by law, payable to the complainant, B. F. Carter, to be approved by the Clerk of the Circuit Court, in the sum of $250.00, conditioned to pay all of the
67 costs which may be occasioned by the entry and prosecution of said appeals if said decree of the said Circuit Court shall be affirmed by the said Supreme Court.

Done and ordered and decreed this 19th day of April, A. D. 1913.

M. F. HORNE,
Judge.

Duly recorded in Circuit Court Minute Book No. 11, page 139, this April 19th, 1913.

[SEAL.]

M. P. HUNTER,
Clerk.

By G. S. FRINK,
D. C.

On the 3rd day of May, 1913, the defendants filed their Supersedeas Bond, which, with the approval thereof by the Clerk, is in words and figures as follows:

Supersedeas Bond.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

Know all men by these presents, that we, Rome Insurance Company, a corporation, American Bank & Trust Company, a corporation, Trustee, and the First National Bank of Rome, Georgia, a corporation, as Principals, and the American Surety Company of New York, a corporation, as Surety, are held and firmly bound unto B. F. Carter, his executors, administrators and assigns, in the sum of Two Hundred and fifty dollars ($250.00) lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves and our assigns, jointly and severally, firmly by these presents, this bond being a supersedeas bond on a special appeal from two orders of the said Circuit Court overruling two motions of the defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and the First National Bank of Rome, Georgia, to quash the service by publication herein attempted to be had upon them, the said motions being made under a special appearance and the said defendants not having appeared generally in the said Circuit Court, but only specially for the purpose of making said motion, and this bond is limited to such a supersedeas bond, solely and only for the purpose of the said appeal and is in no way to constitute a general appearance in the cause by any of the said defendants.

Signed and sealed by the said Rome Insurance Company, a corporation, American Bank and Trust Company, a corporation, Trustee, and the First National Bank of Rome, Georgia, a corporation by their respectively duly authorized officers, on this the 29th day of April, A. D. 1913, at Rome, Georgia, and by the said American Surety Company, of New York, by W. E. Kay, its Resident Vice-President, duly authorized to execute this bond at Jacksonville, Florida, on this 2nd day of May, A. D. 1913.

The condition of this obligation is such that whereas the said defendants in the above entitled cause have taken and entered their special appeal to the Supreme Court of Florida, from an order and decree of the said Circuit Court in Chancery, made and entered on the 14th day of March, 1913, overruling the motion of the said de-

fendants filed under the original bill of complaint herein to quash the pretended service by publication attempted to be had on the said defendants; and whereas the said defendants have taken and entered their further special appeal from a second order and decree of the said Circuit Court in Chancery, made and entered on the 3rd day of April, 1913, overruling the motion of the said defendants filed under the amended bill of complaint herein to quash the pretended
69 service by publication attempted to be had herein on the said defendants, both of the said special appeals having been made returnable to the second Tuesday of June, A. D. 1913, same being the tenth day of the said month, and whereas by a further order and decree of the said Circuit Court it was ordered that the said special appeals operate as a supersedeas, and that all proceedings in said suit be stayed until final disposition thereof upon the defendants giving bond payable to the said complainant in the sum of Two hundred and Fifty Dollars ($250.00) conditioned to pay all costs which may be occasioned by the entry and prosecution of said special appeals if said decree shall be affirmed by said Supreme Court.

Now, therefore, if the said defendants shall pay or cause to be paid all costs which may be occasioned by the entry and prosecution of said special appeals, if the said decrees appealed from shall be affirmed by said Supreme Court, then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] ROME INSURANCE COMPANY,
By J. C. PORTER,
Vice-Pres.

Attest:

J. R. SEAL. [SEAL.]
Secretary Rome Insurance Co.

FIRST NATIONAL BANK,
By B. F. HUGHES,
Pres.

[SEAL.] AMERICAN BANK & TRUST CO.,
Trustee, &c.

STATE BANK OF ROME,
By J. H. O'NEILL,
1st V. P.

[SEAL.] AMERICAN SURETY COMPANY,
By W. E. KAY,
Residing Vice-President.

Attest:

W. M. STOCKTON,
Residing Assistant Secretary.

70 Taken and approved by me this 3rd day of May 1913.
M. P. HUNTER,
[SEAL.] *Clerk of said Court.*

On the 28th day of April, 1913, assignment of errors, with service of copy on opposing counsel, was filed, which is in words and figures as follows:

Assignment of Errors.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

Come now the defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay & Doggett, their solicitors and counsel, and not appearing generally, but appearing specially, solely and only, and limiting their appearance to what, in contemplation of law, amounts only and solely to a special appearance, and at the time of filing their directions to the Clerk for making up a transcript herein, assign the following errors, upon which they intend to rely for a reversal by the Supreme Court of the State of Florida, of the orders and decrees herein appealed from, to-wit:

First. That the Court erred in overruling the motion of the defendants herein, Rome Insurance Company, American Bank & Trust Company, Trustee, and the First National Bank of Rome, Georgia, filed under the original bill herein to quash by publication attempted to be had upon said defendants.

71 Second. That the Court erred in overruling the motion of the defendants, Rome Insurance Company, American Bank & Trust Co., Trustee, and the First National Bank of Rome, Georgia, filed under the amended bill herein to quash service by publication attempted to be had upon the said defendants.

KAY & DOGGETT,
Attorneys and Solicitors for said Defendants,
Appearing Only Specially for the
Purpose of said Appeal.

Copy of foregoing assignment of errors received and service thereof accepted, this 26 day of April, 1913.

S. S. SANFORD,
CARTER & McCOLLUM,
Solicitors for Complainant.

On the 28th day of April, 1913, written direction to the Clerk for making up transcript of record, with service of copy to opposing counsel, was filed, which is in words and figures as follows:

Directions to Clerk.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County.

In Chancery.

B. F. CARTER

vs.

ROME INSURANCE COMPANY et al.

Comes now the defendants, Rome Insurance Company, American Bank & Trust Company, Trustee, and First National Bank of Rome, Georgia, by Kay & Doggett, their solicitors and counsel, and not appearing generally but appearing specially, solely and only
72 and limiting their appearance to what in contemplation of law amounts only and solely to a special appearance and hereby direct the Clerk of the aforesaid Court to commence the making up of the transcript of record in the above case on the 14th day of May, A. D. 1913, and in the making of said transcript, the said Clerk will be governed by the following directions, and instructions, to-wit:

1st. Recite the filing of the original bill, January 3rd, 1913.

2nd. Copy the original bill of complaint, filed January 3rd, 1913.

3rd. Recite the filing of the affidavit of B. F. Carter, January 3rd, 1913.

4th. Copy the affidavit of B. F. Carter filed January 3rd, 1913.

5th. Recite the issuance of the order of publication on the aforesaid defendant, January 3rd, 1913.

6th. Copy Order of publication on the said defendant, issued January 3rd, 1913.

7th. Recite the filing of the Special Appearance and Monition to quash by the aforesaid defendants, February 20th, 1913.

8th. Copy Special appearance and monition to quash, filed February 20th, 1913.

9th. Recite the filing of affidavit of publication, February 5th, 1913.

10th. Recite the filing of the certificate of the Clerk, February 25th, 1913, that the order of publication was made.

73 11th. Recite the filing of the order of the Court allowing the complainant to file the amended bill, overruling the motion of aforesaid defendants under the original bill to quash

service attempted to be had upon them by publication, the said order being filed March 11th, 1913.

12th. Copy the said order of the Court, filed March 14th, 1913.

13th. Recite the filing of the amended bill, March 24th, 1913.

14th. Copy the amended bill filed March 24th, 1913.

15th. Recite the filing of the motion to quash service under the amended bill by the defendants aforesaid under special appearance filed April 3rd, 1913.

16th. Copy the said special appearance and motion to quash under the amended bill filed April 3rd, 1913.

17th. Recite the filing of the order of the Court overruling the motion of the said defendants under the amended — to quash service attempted to be had upon them, the said order being filed April 5th, 1913.

18th. Copy the said Order of the Court filed April 5th, 1913.

19th. Recite the filing of entry of appeal April 10th, 1913.

20th. Copy the entry of appeal, filed April 10th, 1913, and the certificate showing record of the same in accordance with the law.

21st. Copy the applications for order of Supersedeas notice of such application, the acknowledgment of such notice, and the order granting and filing the terms of supersedeas.

71 22nd. Recite the fixing of and copy supersedeas bond, and the order approving same.

23rd. Recite the filing of and copy assignment of errors and service of copy on opposing counsel.

24th. Recite the filing of and copy directions to the Clerk for the preparations of the transcript and service of copy to opposing counsel.

25th. Certify as — the correctness of the transcript in accordance with the law.

26th. Omit all other papers.

KAY & DOGGETT,
Attorneys and Solicitors for said Defendants,
Appearing Only Specially for the Purpose of This Appeal.

Copy the foregoing directions to the Clerk, received on this the 26th day of April, A. D. 1913.

S. S. SANDFORD,
CARTER & McCOLLUM,
Solicitors for Complainant.

STATE OF FLORIDA,
Hamilton County:

I, Melvin P. Hunter, Clerk of the Circuit Court of the Third Judicial Circuit, in and for Hamilton County, Florida, do hereby certify that the foregoing pages numbered from one to thirty-seven inclusive, contains a correct transcript of the record of the order of the said Court entered the 14th day of March, A. D. 1913, overruling the monition to quash service attempted to be had upon the defendant, Rome Insurance Company, American Bank & Trust Company, Trustee, and the First National Bank of Rome, Georgia, filed under the original bill of complaint, and a correct transcript of the record of the order of the said Court entered the third day of April, A. D. 1913, overruling the motion to quash service attempted to be had upon the defendant, Rome Insurance Company,
75 American Bank & Trust Company, Trustee, and the First National Bank of Rome, Georgia, filed under the amended bill of complaint, these orders and this transcript of record being those of the cause in Chancery of B. F. Carter, Complainant, against the Rome Insurance Company, et al., defendant, and this transcript being a true and correct recital and copy of all such papers and proceedings in such cause as appears upon the records and files in my office that have been directed to be included in said transcript by the written demand of said parties.

In witness thereof, I have hereunto set my hand and affixed the seal of the said Circuit Court, this the 22nd day of May, A. D. 1913.

[SEAL.] MELVIN P. HUNTER,
Clerk of Circuit Court in and for Hamilton County, Florida.

In the Supreme Court of Florida, June Term, A. D. 1913.

ROME INSURANCE COMPANY, a Georgia Corporation, and Others, Appellants,

vs.

B. F. CARTER, Appellee.

Hamilton County.

Per Curiam:

This case cannot be distinguished from that of Rome Insurance Company, vs. J. H. Corbett, this day decided, and upon the opinion therein, the order herein appealed from is affirmed.

All Concur.

Exhibit E.

76 In the Supreme Court of Florida, June Term, A. D. 1913.

ROME INSURANCE COMPANY, a Georgia Corporation, and Others, Appellants.

vs.

J. H. CORBETT, Appellee.

Hamilton County.

CROCKELL, *J.*:

A bill was filed in the Circuit Court for Hamilton County against local defendants and also certain non-residents corporations seeking to impound a fund in that county arising out of an alleged fraudulent transaction consummated in that County. Constructive service, in perfect accordance with the Statute was had by publication, and the non-residents corporations appeared specially to quash the service upon the theory that the sole relief prayed was in personam, and that therefore the statute authorizing constructive service by publication does not apply. This motion having been denied these non-residents have sued out what they term a special appeal.

It may well be that this appeal so operates as a general appearance in the Circuit Court, as to render the question before us a moot one, but the Appellee does not ask us to so hold, and it appears that this is but a test case, upon the decision of which many other cases in that Court are depending.

The Bill confines its prayer to an adjudication of the funds sought to be impounded, and does not pray for a general personal decree against these non-residents and we are not to assume upon the face of the bill that the Circuit Court will enter an unauthorized decree; and we have not before us any such question of jurisdiction as was involved in the case of Pennoyer v. Neff, 95 U. S., 714.

77 The purpose of the statute authorizing constructive service by publication is to notify non-residents of the pending suit so that they may if they care to do so, come into the case and if the statute be followed, there is no right in the non-resident to quash this notice; he has his right if not waived to object should the Court thereafter commit an error against him.

Our constructive service statute is broad enough to apply to any suit in equity pending in our Circuit Court and as has been said in Kilpatrick v. Post, 53 N. J. Eq. 591 text 597; 32 Atl. Rep. 267, cannot be confined in its operation to the cases where the Court might make final decree or judgment. Further that Court says: "It was not intended, that the question of the power to enter the ultimate decree or judgment should enter into the question of the right to give notice of the suit to a non-resident or that this question of jurisdiction should be settled on a motion to discharge the order of publication. The Complainant is entitled to have the question of jurisdiction settled by a final decree."

We are not to be understood as holding that the Court might

not quash a service by publication, if the bill upon its face showed that it was clearly a common law cause of action, and that the resort to the equity side of the Court was a subterfuge; the bill before us does not present that case.

The Order is affirmed:

Shackleford, C. J., and Taylor, Hocker and Whitfield, JJ., concur.

Exhibit F.

78 *Mandate from Supreme Court.*

THE STATE OF FLORIDA:

To the Honorable the Judge of the Circuit Court for the Third Judicial Circuit of Florida, Greetings:

Whereas, lately in and for the Circuit Court of the Third Judicial Circuit of Florida, in and for the County of Hamilton, in a cause wherein B. F. Carter was complainant, and Rome Insurance Company, a corporation, American Bank & Trust Company, a corporation, First National Bank of Rome, Georgia, a corporation, and Bank of Jasper, a corporation, were defendants, the order of said Circuit Court was rendered April 15th, 1913, as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the State of Florida; by virtue of an appeal agreeably to the laws of said State in such case made and provided fully and at large appears:

And whereas, at the June Term of said Supreme Court, holden at Tallahassee, A. D. 1913, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel: in consideration whereof, on the 9th day of December, A. D. 1913, it was considered by said Supreme Court that the said Order of the Circuit Court, be and the same is hereby affirmed; It is further ordered that the Appellee do have and recover of and from the Appellants his cost by him in this behalf expended which cost- are taxed at the sum of —, therefore,

You are hereby commanded, that such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had.

79 Witness, the Honorable Thomas M. Shackleford, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 10th day of January, 1914.

[SEAL.] M. H. MABRY,
Clerk Supreme Court of Florida.

January 10, 1914.

Original mailed to Clerk Circuit Court for Hamilton County, Fla.

"Exhibit G."

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company and American Bank & Trust Co., Trustee.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

J. R. BROWN, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Come now defendants, Rome Insurance Company, and American Bank & Trust Company, Trustee, by Kay & Doggett, their solicitors and counsels, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in contemplation of law amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end, do hereby move to quash said service upon the following grounds, to-wit:

1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendants.

80 2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations not residents in Florida, and have not received personal service of process herein in the State of Florida. And to vacate and hold said pretended and attempted services by publication upon these defendants to be for naught; and these defendants pray that the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to said Purpose.

Exhibit H.

Special Appearance to Quash Pretended Service by Publication on Rome Insurance Company and American Bank & Trust Company, Trustee.

In the Circuit Court of Florida, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

J. R. BROWN, Complainant,

vs.

ROME INSURANCE COMPANY et al., Defendants.

Come now defendants, Rome Insurance Company and American Bank & Trust Company, Trustee, by Kay & Doggett, their solicitors and counsel, and not appearing generally, but appearing specially, solely and only, and limiting this appearance to what, in
81 contemplation of law, amounts only and solely to a special appearance for the purpose of quashing the attempted and pretended service herein, to that end do hereby move to quash said service and to vacate and hold said pretended and attempted service by publication upon these defendants to be for naught, upon the following grounds, to-wit:

1st. Because, on account of the attempted and pretended service by publication, the Court does not acquire jurisdiction of said defendant.

2nd. Because said service is defective and not such as is required by law, in that the defendants are foreign corporations, not resident in Florida and have not received personal service of process herein, in the State of Florida.

3rd. Because this is an action in personam, and said defendants have not received personal service of process herein in the State of Florida.

4th. Because as appeared upon the face of the record in this cause, legal service of process has not been had upon the said defendants.

And these defendants pray the judgment of this Honorable Court whether they will be compelled to appear herein, or answer hereto, because of the many defects in said pretended service, by reason of which no legal service has been had upon the said defendants, nor have said defendants accepted service herein, nor have they voluntarily appeared herein, nor have they waived due service of process upon them.

KAY & DOGGETT,
Attorneys and Solicitors,
Appearing Specially, Solely, and Only for the Purpose of This Motion and Limiting the Same to Said Purpose.

"Exhibit J."

82 *Stipulation of Counsel.*

In the Circuit Court, Third Judicial Circuit, in and for Hamilton County, Florida.

In Chancery.

J. R. Brown

vs.

Rome Insurance Company et al.

It is hereby stipulated and agreed by and between S. S. Sandford and Carter & McCollum, Solicitors for the Complainant herein, and Kay & Doggett, who have not appeared generally, but who have appeared only specially as solicitors for the defendant herein, Rome Insurance Company, American Bank & Trust Company and the First National Bank of Rome, Georgia, and who are making this agreement specially solely for the purpose herein expressed.

That proceedings in this cause be stayed pending the prosecution of an appeal from the order of the Court overruling the motion of the said defendants to quash service in the case of B. F. Carter vs. Rome Insurance Company, et al., which said case is now on file and being prosecuted in this Court;

That the ultimate decision of the said appeal in the said case of B. F. Carter vs. Rome Insurance Company shall be decisive of the validity of the service by publication on the said defendants in this case, and if the service in the said Carter case be ultimately held defective, and ordered quashed, then the service in this case, the validity of which involves identically the same legal question as that in the Carter case shall be held defective and shall be quashed; and

That this stipulation of counsel shall not be considered as constituting a general appearance of the said defendant in this cause.

83 This agreement being signed and entered into this 10th day of April, A. D. 1913.

——— ———,

——— ———,

Solicitors for Complainants.

———,

Solicitors for Defendants Rome Insurance Company, American Bank & Trust Company, and First National Bank of Rome, Georgia, Who Appeared Only Specially in Said Cause.

"Exhibit K."

Indorsed: Replication to Additional Pleas of the Defendant. Filed June 15th, 1915. W. L. Devore, Clerk.

Motion to Strike Replications.

In the District Court of United States, Southern District of Florida.

AMERICAN BANK & TRUST COMPANY OF ROME, GEORGIA, Plaintiff,

vs.

THE BANK OF JASPER, of Jasper, Florida, Defendant.

Comes now the defendant by S. S. Sandford and Carter & McCollum, its attorneys, and moves the Court to strike the replications, severally, filed by the plaintiff to the additional plea of defendant to the 1st and 2nd counts of plaintiff's declaration, on the following grounds, to be taken and applied, severally, to each of said replications:

84 1. Because said replication does not avoid the allegations of the plea.

2. Because said replication admits the allegations of the plea which has been held by the Court to constitute a good defense.

3. Because said replication presents no issue to be tried.

4. Because said replication sets up no matter which avoids the material allegations of the plea.

5. Because said replication presents the same matter passed upon by this Court in ruling upon plaintiff's demurrer to the plea, filed August 3rd, 1914.

6. Because said replication presents wholly immaterial matter.

7. Because said replication is so framed as to prejudice, embarrass and delay the fair trial of the issues.

CARTER & McCOLLUM,
S. S. SANDFORD,
Attorneys for Defendant.

Demurrer to Replications.

In the District Court of the United States, Southern District of Florida.

AMERICAN BANK & TRUST COMPANY OF ROME, GEORGIA, Plaintiff,

vs.

THE BANK OF JASPER, of Jasper, Florida, Defendant.

85 Now comes the defendant in the above entitled cause by S. S. Sandford and Carter & McCollum, its attorneys, and demurs to plaintiff's replications, severally, to defendant's ad-

ditional plea to the 1st and 2nd counts of plaintiff's declaration, and says that said replication is bad in substance and insufficient in law.

CARTER & McCOLLUM,
S. S. SANDFORD,
Attorneys for Defendant.

Substantial matters of law to be argued and insisted upon as applicable to said replications, severally:

1. Said replication does not avoid the allegations of the plea.

2. Said replication admits the material allegations of said plea and does not set forth any matter in avoidance of the same.

3. Said replication shows that plaintiff has no cause of action against the defendant.

4. Said replication neither confesses and avoids or traverses and denies the said plea.

5. Said replication presents no issuable matter in avoidance of said plea.

6. Said replication shows jurisdiction in the State Court, and the entry of a valid decree by said Court.

7. Said replication shows that the said proceedings in the State Court was for the purpose of impounding a particular fund and the decree of the State Court was to that effect, and, therefore, a binding and valid decree without personal service on the plaintiff herein.

8. Said replication shows that the plaintiff in this cause by its own act voluntarily submitted itself to the jurisdiction of the State Court.

86 9. Said replication shows that the plaintiff in this cause voluntarily submitted itself to the jurisdiction of the State Court and sought affirmative relief therefrom, and, therefore, the final decree entered against it was of binding force and effect.

CARTER & McCOLLUM,
S. S. SANDFORD,
Attorneys for Defendant.

I, Ira J. Carter, do hereby certify that I believe the foregoing demurrer is well founded in law.

IRA J. CARTER,
Attorney for Defendant.

STATE OF FLORIDA,
County of Duval:

Before me personally appeared Ira J. Carter, who being first duly sworn, deposes and says that he is one of the attorneys for the defendant in the above entitled cause and that the foregoing demurrer is not interposed for the purpose of delay.

[SEAL.] IRA J. CARTER.

Sworn to and subscribed before me this 5th day of July, 1915.

J. T. CRAWLEY,
Notary Public.

Indorsement: Motion to Strike and Demurrer to Replications Filed July 5, 1915. W. L. Devore, Clerk.

In the United States District Court, Southern District of Florida.

76-3.

AMERICAN BANK & TRUST COMPANY OF ROME, GEORGIA,

vs.

THE BANK OF JASPER, FLORIDA.

This cause coming on to be heard upon the demurrer to and motions to strike the replications filed by plaintiff to defendant's 87 additional pleas to the first, second, third, fourth and fifth counts of the declaration, and the same having been argued and submitted,

It is considered that said demurrers be and each of them is hereby sustained.

Done this February 2, 1917.

RHYDON M. CALL,
District Judge.

The questions sought to be raised by these replications are the questions passed on by this Court in its ruling on the demurrer to the pleas. I adhere to the ruling then made.

RHYDON M. CALL,
Judge.

Indorsed: Order sustaining Demurrer. Feb'y 2, 1917. E. R. Williams, Clerk.

Stipulation.

In the District Court of the United States Within and for the Southern District of Florida.

AMERICAN BANK & TRUST COMPANY OF ROME, GEORGIA, Plaintiff,

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida.

It is hereby stipulated and agreed by and between the parties in above entitled cause, by and through their respective attorneys of record herein, as follows:

1. That all pleas filed by the defendant herein be withdrawn from the files of this cause save and excepting only the additional
88 pleas filed by the defendant herein on August 3rd, 1914, it being understood and hereby stipulated that the defendant may re-file in said cause said pleas or any of them whenever it may deem advisable to do so, and that upon the re-filing of any or all of said withdrawn pleas, the record herein as to such re-filed pleas and pleadings subsequent thereto shall stand as it stands with respect to such re-filed pleas at the date of this stipulation.

2. That the pleadings herein be amended so that the corporate name of the plaintiff herein shall be changed from American Bank & Trust Company to The State Bank of Rome, this change in the corporate name of said plaintiff having been made since the institution of this suit under and by virtue of the laws of the State of Georgia.

Signed at Jacksonville, Florida, this 8th day of January, A. D. 1919.

O. O. McCOLLUM.
S. S. SANDFORD.
F. P. FLEMING,
Att'ys for Defendant.
W. E. KAY.
J. L. DOGGETT,
Attorneys for Plaintiff.

Indorsed: Stipulation. Filed Jan. 9, 1919. E. R. Williams, Clerk.

89 *Declination to Plead Further.*

In the United States District Court Within and for the Southern District of Florida.

THE STATE BANK OF ROME, a Corporation under the Laws of Georgia and Doing Business at Rome, Georgia, Plaintiff.

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

And now comes the plaintiff in the above entitled cause, by its undersigned attorneys of record herein, and, in view of the stipulation this day entered into by and between the parties herein, the plaintiff does hereby elect to stand upon its demurrer to defendant's pleas filed herein on August 3rd, 1914, and upon its replications to said pleas, to which replications the Court has sustained a demurrer, and the plaintiff does hereby decline to plead further in this cause.

W. E. KAY,
J. L. DOGGETT,
Attorneys for Plaintiff.

Indorsed: Declination to Plead Further. Filed January 9, 1919. E. R. Williams, Clerk.

90 In the United States District Court Within and for the Southern District of Florida.

THE STATE BANK OF ROME, a Corporation under the Laws of Georgia and Doing Business at Rome, Georgia, Plaintiff,

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

Comes now the defendant in the above entitled cause, and moves the Court for the entry of judgment final herein in favor of the defendant, consequent upon the sustaining of defendant's demurrer to the replication of the plaintiff herein filed June 15th, 1915, to the additional pleas of the defendant herein filed on the 3rd day of August, 1914.

O. O. McCOLLUM.
S. S. SANDFORD,
F. P. FLEMING,
Attorneys for Defendant.

Indorsed: Final Judgment. Filed Jan. 9, 1919. E. R. Williams, Clerk.

91 *Final Judgment.*

In the United States District Court Within and for the Southern District of Florida.

THE STATE BANK OF ROME, a Corporation under the Laws of Georgia and Doing Business at Rome, Georgia, Plaintiff,

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

This cause came on this day for hearing upon the Motion of the defendant for judgment in its favor consequent upon the sustaining of defendant's demurrer to the Replication of the plaintiff filed herein on June 15th, 1915, and it appearing to the Court from the records and files in this cause that the demurrer to said replications was sustained by the Court on the 2nd day of February, 1917, and that the plaintiff has this day filed in said cause its written declination to plead further therein, and has thereby elected to stand upon its demurrer, to defendant's additional pleas filed herein on August 3rd, 1914, which demurrer was overruled by the Court, and upon its replication to said pleas, to which replication the Court has sustained demurrer of the defendant:

It is thereupon considered by the Court that the said plaintiff, The State Bank of Rome, a corporation under the laws of Georgia, take nothing by its said writ and declaration, and that the defendant go hence without day.

It is further considered by the Court that the defendant do have and recover of and from the plaintiff its costs in this behalf, and here taxed at — Dollars, for which execution may issue.

62 Considered and Ordered at Jacksonville, Florida, this January 9th, 1919.

RHYDON M. CALL,
Judge.

Indorsed: Final Judgment.

Assignment of Errors.

In the District Court of the United States, Southern District of Florida.

THE STATE BANK OF ROME, a Corporation under the Laws of Georgia and Doing Business at Rome, Georgia, Plaintiff.

v.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida.

And now comes the Plaintiff in the above styled cause by its undersigned Attorneys, and assigns as error the following rulings and decisions of the District Court herein, that is to say:

First. The Court erred in overruling plaintiff's demurrer to defendant's additional plea to the first Count of plaintiff's declaration. This assignment of error is based on the ground that said additional plea attempts to set up as a bar to the cause of action set forth in said first count of the declaration, a Chancery Decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity
63 suit the plaintiff herein did not enter a general appearance.

Second. The Court erred in overruling plaintiff's demurrer to defendant's additional plea to the second count of plaintiff's declaration. This assignment of error is based on the ground that said additional plea attempts to set up as a bar to the cause of action set forth in said second count of the declaration, a Chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive service by publication in an equity

suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Third. The Court erred in overruling plaintiff's demurrer to the defendant's additional pleas filed August 3rd, 1914, to the first and second counts of plaintiff's declaration.

This assignment of error is based on the ground that each of said additional pleas attempts to set up as a bar to the cause of action set forth in said first, and second counts of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Fourth. The Court erred in sustaining defendant's demurrer to plaintiff's replication to defendant's additional plea to the first count of plaintiff's declaration.

This assignment of error is based upon the ground that said replication shows and sets forth any and all proceedings in said
94 Chancery suit in the Circuit Court of Hamilton County, Florida, in which the plaintiff herein participated in any manner whatsoever, and thereby shows that said additional plea attempts to set up as a bar to the cause of action set forth in said first count of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Fifth. The Court erred in sustaining defendant's demurrer to plaintiff's replication to the defendant's additional plea to the second count of plaintiff's declaration.

This assignment of error is based on the ground that said replication shows and sets forth any and all proceedings in said Chancery suit in the Circuit Court of Hamilton County, Florida, in which the plaintiff herein participated in any manner whatsoever and thereby shows that the said additional plea attempts to set up as a bar to the cause of action set forth in said count of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law, and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Sixth. The Court erred in sustaining the demurrer to the replication filed by plaintiff to defendant's additional pleas to the first and second counts of the declaration.

This assignment of errors is based on the ground that said replication shows and set- forth any and all proceedings in said
5 Chancery suit in the Circuit Court of Hamilton County, Florida, in which the plaintiff herein participated in any manner whatsoever, and thereby shows that said additional pleas attempt to set out as a bar to the cause of action set forth in said first and second counts of the declaration, a chancery decree of the Circuit Court of Hamilton County, Florida, which decree is null and void as to the plaintiff herein, for the reason that said decree was not obtained through due process of law and is a decree in personam, founded solely upon constructive service by publication in an equity suit in personam, in which equity suit the plaintiff herein did not enter a general appearance.

Seventh. The Court erred in entering final judgment on demurrer for defendant.

This assignment of error is based on the ground that, under the facts set forth in defendant's additional pleas and in plaintiff's replication thereto, which facts are admitted under the pleadings, it affirmatively appears that said pleas set forth no defense to the cause of action set forth in the first and seconds counts of plaintiff's declaration.

Wherefore, and for divers other grounds appearing upon the record, plaintiff prays that the said several rulings, decisions and judgment may be reversed.

W. E. KAY,
J. L. DOGGETT,
L. A. DEAN,
J. E. DEAN,
HENRY C. CLARK,
Attorneys for Plaintiff.

Indorsed: Assignment of Errors. Filed June 23, 1919. E. R. Williams, Clerk.

6 Writ of Error omitted from the Printed Record, being filed in the original.

* * * * * * *

Bond for Costs.

In the District Court of the United States, Southern District of Florida.

THE STATE BANK OF ROME, a Corporation under the Laws of Georgia and Doing Business at Rome, Georgia, Plaintiff,

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida and Doing Business at Jasper, Florida, Defendant.

Know all men by these presents, that Hartford Accident and Indemnity Company, a corporation, is held and firmly bound unto The Bank of Jasper, a corporation, defendant in the above styled cause, in the penal sum of Five Hundred ($500.00) Dollars, for the payment whereof, well and truly to be made, it does hereby bind itself, its successors and assigns, firmly by these presents.

Signed and Sealed this 17th day of June, A. D. 1919.

The condition of the foregoing obligation is such that, whereas, the above named, The State Bank of Rome has sued out a writ of error from the judgment of the District Court of the United States in and for the Southern District of Florida, rendered on the 9th day of January, A. D. 1919, in a certain cause therein pending, wherein the above named The State Bank of Rome was plaintiff, and the said The Bank of Jasper, a corporation, was defendant, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable before the said Court on the 23rd day of July, A. D. 1919; now
97 if the said The Bank of Rome shall prosecute the said writ of error to effect and answer all costs and damages, if they shall fail to make their plea good, then this obligation shall become null and void and else shall remain in full force and virtue.

[SEAL.] HARTFORD ACCIDENT AND INDEMNITY CO.,
A Corporation,
By H. F. FROMME,
Attorney in Fact.

Taken and approved by me this 23rd day of June, A. D. 1919.
RHYDON M. CALL,
Judge.

Indorsed: Bond for Costs, filed June 23, 1919. E. R. Williams, Clerk.

Citation.

76-3.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Bank of Jasper, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Circuit Court of Appeals of the United States, to be holden at New Orleans, Louisiana, on the 23rd day of July, A. D. 1919, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States, for the Southern District of Florida, wherein the State Bank of Rome, Georgia, a corporation, is Plaintiff in Error, against you, The Bank of Jasper, a corporation, Defendant in Error, to show cause, if any there be, why the judgment in said writ of error mentioned, entered on the 9th day of January, 1919, should not be corrected and speedy justice done to the parties
98 in this behalf.

Witness the Honorable Rhydon M. Call, Judge of the District Court of the United States for the Southern District of Florida, this 25th day of January, A. D. 1919.

RHYDON M. CALL,
[SEAL.] *Judge.*

Attest:
EDWIN R. WILLIAMS,
Clerk.

Indorsed: Citation. Filed June 23, 1919. E. R. Williams, clerk.

Affidavit of R. L. Frink.

United States District Court, Southern District of Florida.

THE STATE BANK OF ROME, GEORGIA, a Corporation, Plaintiff in Error,

vs.

THE BANK OF JASPER, a Corporation, Defendant in Error.

STATE OF FLORIDA,
County of Hamilton, ss:

Personally appeared before me, a Notary Public within and for the State of Florida at Large, one R. L. Frink, who being by me first duly sworn, deposes and says that he did on the 27th day of June, A. D. 1919, personally deliver a copy of the citation in the above styled cause to Thomas C. Watts the President of The Bank of Jasper, a corporation, in the above entitled cause.

R. L. FRINK.

Sworn to and subscribed before me on this 27th day of June, A. D. 1919.

J. A. JACKSON,
Notary Public.

[SEAL.]

99 Indorsed: Affidavit of R. L. Frink. Filed June 30, 1919. E. R. Williams, clerk.

In the District Court of the United States, Southern District of Florida.

THE STATE BANK OF ROME, a Corporation under the Laws of Georgia, Plaintiff in Error,

vs.

THE BANK OF JASPER, a Corporation under the Laws of Florida, Defendant in Error.

To the Clerk of the above-styled court:

In transmitting the record in the above entitled cause to the Clerk of the United States Circuit Court of appeals, you will please include in such record, and the same shall consist of each, severally, of the following:

1. Præcipe for summons filed January 27th, 1913.

2. Summons issued January 27th, 1913, together with the return thereon.

3. Appearance filed March 3rd, 1913.

4. Declaration filed March 3rd, 1913.

5. Stipulation and order of Court filed July 20th, 1914.

6. Additional pleas filed August 3rd, 1914.

7. Demurrer to additional pleas filed September 7th, 1914.

8. Defendant's joinder in demurrer filed September 30th, 1914. (Omit demurrer to additional replications contained in same cover with this joinder of issue.)

100 9. Order of Court filed January 12th, 1915.

10. Motion and Order of Court filed June 15th, 1915.

11. Replications filed June 15th, 1915.

12. Motion to strike and demurrer to replications filed July 5, 1915.

13. Order sustaining demurrer filed February 2nd, 1917.

14. Stipulation of Counsel filed January 9th, 1919.

15. Declination to plead further, filed January 9th, 1919.

16. Motion for final judgment and final judgment filed January 9, 1919.

17. Assignment of errors, filed May —, 1919.

18. Writ of Error, dated May —, 1919.

19. Bond for costs, filed May —, 1919.

20. Citation, dated May —, 1919.

22. Affidavit of R. L. Frink as to service of copy of citation and copy of writ of error upon the defendant in Error.

23. Directions to the Clerk, with affidavit of service thereof upon O. O. McCollum, Esq., Attorney for Defendant in Error.

24. You will please omit all other papers, pleadings, etc., from the record, for any and all other papers and pleadings are
101 irrelevant and immaterial to the assignment of errors.

W. E. KAY,
J. L. DOGGETT,
L. A. DEAN,
J. E. DEAN,
HENRY C. CLARK,
Attorneys for Plaintiff in Error.

To O. O. McCollum, Esq.,
Attorney for defendant in error:

You will please take notice of the above and foregoing directions to the Clerk.

W. E. KAY,
J. L. DOGGETT,
L. A. DEAN,
J. E. DEAN,
HENRY C. CLARK,
Attorneys for Plaintiff in Error.

STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary Public within and for the State of Florida at large, one E. P. Owen, Jr., who being by me first duly sworn, deposes and says that on the 10th day of May, A. D. 1919, he did personally deliver a copy of the above and foregoing directions to the Clerk in the above-styled cause, personally to O. O. McCollum, Esquire, Attorney of Record for The Bank of Jasper.

E. P. OWEN, JR.

Sworn to and subscribed before me this 24th day of June, A. D. 1919.

ENNIS BOGGS,
[SEAL.] *Notary Public, State of Florida, at Large*

My commission expires 7th March, 1921.

Indorsed: Directions to clerk, filed June 24, 1919. E. R. Williams, clerk.

102 UNITED STATES OF AMERICA,
Southern District of Florida:

I, Edwin R. Williams, Clerk of the United States District Court in and for the Southern District of Florida and as such the legal custodian of the records and files of said Court, do hereby certify that the foregoing typewritten pages and part pages numbered from 1 to 108 inclusive, constitute a true and correct copy of the original record and proceedings including the assignment of errors in a cause lately pending in this Court wherein the State Bank of Rome, a corporation is plaintiff and the Bank of Jasper, a corporation is Defendant as prepared according to directions filed in said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at Jacksonville in said District, this 11th day of August, A. D. 1919.

EDWIN R. WILLIAMS,
[SEAL] *Clerk.*
By W. L. DEVORE,
Deputy Clerk

103 That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of January 26, 1920.

No. 3432.

STATE BANK OF ROME

versus

THE BANK OF JASPER.

On this day this cause was called, and, after argument by Henry C. Clark, Esq., and W. E. Kay, Esq., for plaintiff in error, and Hilton S. Hampton, Esq., and F. P. Fleming, Esq., for defendant in error, was submitted to the Court.

Opinion of the Court.

Filed March 10th, 1920.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3431.

First National Bank of Rome, Georgia, Plaintiff in Error,

versus

The Bank of Jasper, Defendant in Error.

Error to the District Court of the United States for the Southern District of Florida.

W. E. Kay, J. L. Doggett, L. A. Dean, J. E. Dean, and Henry Clark for Plaintiff in Error.
Hilton S. Hampton and F. P. Fleming for Defendant in Error.

No. 3432.

State Bank of Rome, Plaintiff in Error,

versus

The Bank of Jasper, Defendant in Error.

Error to the District Court of the United States for the Southern District of Florida.

W. E. Kay, J. L. Doggett, L. A. Dean, J. E. Dean, and Henry Clark for Plaintiff in Error.
Hilton S. Hampton and F. P. Fleming for Defendant in Error.

No. 3433.

State Bank of Rome, Georgia, Plaintiff in Error,

versus

First National Bank of Jasper, Florida, Defendant in Error.

Error to the District Court of the United States for the Southern District of Florida.

W. E. Kay, J. L. Doggett, L. A. Dean, J. E. Dean, and Henry C. Clark for Plaintiff in Error.
Hilton S. Hampton for Defendant in Error.

Before Walker, Circuit Judge, and Grubb and Jack, District Judges.

By the COURT:

The questions presented in these cases are substantially the same as those ruled on in the case of First National Bank of Rome, Georgia, vs. First National Bank of Jasper, Florida, MS. U. S. Circuit Court of Appeals, Fifth Circuit. Present Term. For reasons stated in the opinion rendered in the just cited case the judgment in each of the above numbered and entitled cases is

Reversed.

(Original filed March 10th, 1920.)

106 *Opinion of the Court.*

Filed March 10th, 1920.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3430.

FIRST NATIONAL BANK OF ROME, GEORGIA, Plaintiff in Error,

versus

THE FIRST NATIONAL BANK OF JASPER, FLORIDA, Defendant in Error.

Error to the District Court of the United States for the Southern District of Florida.

W. E. Kay, J. L. Doggett, L. A. Dean, J. E. Dean, and Henry C. Clark for Plaintiff in Error.

Hilton S. Hampton, (S. S. Sandford and Hilton S. Hampton on the brief), for Defendant in Error.

Before Walker, Circuit Judge, and Grubb and Jack, District Judges.

GRUBB, *District Judge:*

This was a suit in the District Court upon a certificate of deposit brought by plaintiff in error as plaintiff against the defendant in error as defendant. Judgment for the defendant was based upon a plea that set up as a bar to the suit a decree of the Circuit Court of Hamilton County, Florida, in which one Corbett was plaintiff, and the parties to the present suit and others were defendants. The sufficiency of the plea as a bar to the present suit depends upon (1) its validity and (2) its effect.

107 (1) First as to its validity as against the plaintiff in this suit. At the time the Florida suit was brought the present

plaintiff was a non-resident of Florida, and was served by publication under a statute of Florida, permitting such service. The sufficiency of the constructive service was assailed by a motion of the then defendant to set aside or quash the service, which was overruled by the Circuit Court; from the order overruling the motion an interlocutory appeal was taken to the Supreme Court of Florida, which affirmed the order of the Circuit Court for reasons hereafter stated. It is settled that constructive service can only bring non-residents within the jurisdiction of a court where there is a res in the control of the Court in which the non-resident has an interest, and then only for the sole purpose of adjudicating his rights, if any, to the res. Pennoyer vs. Neff, 95 U. S. 714. This is the extent of the jurisdiction of a court to proceed upon substituted service, in the absence of personal service, or appearance. At the foundation of this limited jurisdiction based upon substituted service is the control of a res by the court asserting it. If there is no such res, the court acquires no jurisdiction for any purpose over the person of a non-resident, upon constructive service. The Circuit Court of Hamilton County, Florida, proceeded to final decree in the case of Corbett vs. First National Bank of Jasper and others upon the theory that there was a res, in which the non-residents were interested, in the control of that Court, and the Supreme Court of Florida on appeal took the same view, and sustained the constructive service upon the non-residents upon that idea. The supposed res was the proceeds of a note which the plaintiff Corbett had discounted at the Jasper Bank, for the purpose of paying for shares of the capital stock of the Rome Ins. Co., which he claimed to have been induced 108 by fraud to purchase. The proceeds of the note were paid to the trustee for the Insurance Company, and immediately deposited by him in the Jasper Bank, which issued its certificate of deposit therefor to the said trustee. The present suit is brought by the holder of the certificate of deposit. It is upon the theory that the proceeds of the note, so deposited in the Jasper Bank, created a specific fund in that bank, control of which could be and was acquired by the Hamilton County Circuit Court by order of that Court restraining its disposition, and thereby impounding it, that the two Florida Courts acted. The correctness of the theory is essential to the jurisdiction of the Florida Circuit Court, for if there was no fund there could be no jurisdiction acquired by substituted service. The proceeds of Corbett's note, when discounted, were paid to him by the Jasper Bank; and by him to the trustee for the Insurance Company, which deposited them in the Jasper Bank, taking the bank's obligation therefor in the form of its certificate of deposit. Undoubtedly the transaction was accomplished by bookkeeping entries, no money passing. In any event, the proceeds of Corbett's note never became a special deposit or fund, but were mingled with the Jasper Bank's monies indiscriminately when deposited, and the bank's general obligation substituted for the actual money. The certificate of deposit evidenced no particular fund or money, but the obligation of the bank to repay in like amount as

deposited out of any of its assets. There being no res in the control of the Circuit Court of Hamilton County, jurisdiction was not conferred on that court over the non-residents by substituted or constructive service. After the Supreme Court of Florida affirmed the appeal from the interlocutory order of the Circuit Court, sustaining the service, the non-residents made no further appearance or
109 answer, and the final decree, as to them, was one by default.

It is contended by defendant in error that the effect of appealing from the interlocutory order by the plaintiff in error, (defendant in the Corbett suit), was a general appearance on its part in that case, and conferred jurisdiction over its person on the Circuit Court on the remand of the case. The rule in Florida, differing from that which obtains in the Federal Courts, is to the effect that an appellant, though objecting to the sufficiency of service successfully, is considered in court upon the return of the case to the lower court. Conceding that this court will follow the rule of decision in the State Court, in passing upon a judgment in that court, we think the Florida rule did not apply in the Corbett case. The question of its applicability was suggested but not decided by the Supreme Court of Florida in its opinion in that case because the appellee asked that the appeal be decided on another ground. The Supreme Court held that "if the statute be followed, there is no right in the non-resident to quash this notice (by publication); he has the right if not waived, to object should the Court thereafter commit an error against him." The order of the Circuit Court was for that reason affirmed, apparently leaving the sufficiency and effect of the substituted service to be determined by the character of relief awarded against the non-residents upon final decree. The appeal was from an interlocutory order of the Circuit Court, which affected only the question of service. It was not an appeal from a final decree, upon which the insufficiency of service was assigned with other error, as in the cases cited supporting the Florida rule. The Florida statute allowing appeals from interlocutory orders was held by its Supreme Court in
110 the Corbett case to cover an order affecting service only. No other question than the rightful presence of the non-residents in the Circuit Court by virtue of the substituted service was presented by the appeal. If the rule contended for applies to such an interlocutory appeal, then the Florida legislature and its Supreme Court did a futile thing in providing a method of appealing from an order of the Circuit Court sustaining service, where the taking of the appeal itself by the party complaining of service alone puts the party in court as effectually as if properly served, and renders the appeal ineffectual for any purpose. We are not prepared to extend the rule in Florida as to the effect as an appearance of the taking of an appeal from a final decree, upon which error based on the insufficiency of service was relied upon with others, to an appeal from an interlocutory order, which involved only the question as to whether the appellant was rightfully in court, as in the Corbett case. Conceding that there is no authority in the practice of Florida for special appeals, an appeal from an interlocutory order, questioning the suf-

ficiency of service only, is authorized, and from this it is to be implied that an appellant is to derive some benefit from the appeal, which he could not do if the taking of the appeal constituted a general appearance on his part. It is not reasonably supposable that it was intended that the taking, as allowed by the statute, of an appeal from such an order as the one in question, should have the effect of depriving the appellant of the sole benefit sought to be obtained, or obtainable, by a resort to the remedy given. In the absence of authority from the Florida Supreme Court, applying the general rule to the case of such an interlocutory appeal, common sense requires us to decline to make the application. This contention is made by defendant in error, though there was a stipulation
111 in the State Court case, that the supersedeas should not constitute a general appearance.

(2) Aside from the question of jurisdiction acquired by service or appearance or both, and the validity of the decree as dependent thereon, is the question of the legal effect of the final degree rendered in the Corbett case.

We think that the decision of this case may be made to depend upon the effect to be given the decree of the Florida Circuit Court, as a defence to this suit. It is set up as a defence to a suit by the plaintiff in error to enforce a personal liability against the defendant in error upon a certificate of deposit. If the Florida decree was rendered with jurisdiction over the person of the plaintiff in error, and if its effect was to adjudicate that the defendant in error was not liable to plaintiff in error in a personal action upon the certificate of deposit, it would present a complete defence to the present suit. If either proposition fails to establishment, it presents no defence. We do not think that the Florida decree adjudicated the non-liability of the defendant in error to a personal judgment in favor of a holder of the certificate of deposit. The Supreme Court of Florida in the opinion in the case of Rome Insurance Company vs. Corbett, (based on this same transaction), said of the bill in that case:

"The Bill confines its prayer to an adjudication of the fund sought to be impounded, and does not pray for a general personal decree against these non-residents, and we are not to assume upon the face of the Bill that the Circuit Court will enter an unauthorized decree, and we have not before us any such question of jurisdiction as was involved in the case of Pennoyer vs. Neff, 95 U. S. 714. * * * We are not to be understood as holding that the Court might not quash a service by publication, if the Bill upon its face showed that it was clearly a common law action, and that the resort to the equity side of the court was a mere subterfuge."

The Supreme Court of Florida construed the bill as asking relief only out of a fund supposed to be in the Jasper Bank, and held that that was the only character of relief that was grant-
112 able as against the non-resident defendants upon constructive service. The Court said that it contained no prayer for a general personal decree, and that such a decree would be unauthorized

and in conflict with the doctrine of Pennoyer vs. Neff. This was a direction to the lower court to restrict whatever decree it might render against non-residents upon constructive service to an adjudication of their rights in the fund, which was supposed to be in the possession of the defendant in error, the Jasper Bank. The Supreme Court reserved "his right, if not waived, to object should the Court thereafter commit an error against him." The fact that there was no such fund in existence, and that only the personal liability of the defendant in error on the certificate of deposit was in question, is immaterial. The Circuit Court of Hamilton County and the Supreme Court of Florida both entertained the view that the proceeds of the notes discounted, when deposited in the Jasper Bank to the credit of the Trustee of the Rome Insurance Company created a fund, which was evidenced by the certificate of deposit, and which conferred jurisdiction on the Circuit Court over the non-residents, but only to the extent of their interest in the supposed fund. It will be presumed that the subsequent final decree of the Hamilton County Circuit Court was restricted as directed by the Supreme Court. A reference to its terms makes this certain. It adjudged the agreement between Corbett and the Rome Insurance Company and its Trustee for the sale of its capital stock void and of no effect; that the proceeds of the note of Corbett, covered by the certificate of deposit be impressed with a trust in favor of Corbett and be decreed to belong to him; that the Trustee for the Rome Insurance Company be adjudged to have no interest in the proceeds of the note and that defendant in error be required to pay such proceeds to Cor-
113 bett and enjoined from paying them to the Trustee or any one for it; that the certificate of deposit in so far as it covers and includes the proceeds derived from the said note be decreed void and of no effect. It is clear that the decree adjudged only the rights of the non-residents in and to the supposed fund in the Jasper Bank and did not attempt to adjudge that the Jasper Bank was not personally liable to the non-resident holders of the certificates of deposit. Under the doctrine of Pennoyer vs. Neff, recognized and referred to in the opinion of the Supreme Court of Florida, it could not have done so. The decree went as far as it could go, in denying the non-residents the right to participate in the supposed, but actually non-existent, fund in the Jasper Bank.

The defendant in error set up the decree as a defence to a common law action brought by a non-resident holder of the certificate of deposit against the Jasper Bank, seeking to subject it to a judgment upon the theory of its personal liability by reason of its having executed the certificate of deposit which was in legal effect a due bill and imported the personal liability of the maker, as much as would a promissory note. A decree which had the sole effect of adjudging that the plaintiff had no rights in a special fund, whether existent or not, could not bar the right of the plaintiff to try out in the common law action the personal liability of the bank that issued the certificate. If the Jasper Bank was personally liable to the holder of the certificate, the holder was entitled to pursue it to judgment and collect the judgment out of its assets, other than the

fund. The decree was therefore no defence to the action, and this would result, even though the Hamilton County Circuit Court had obtained jurisdiction, by service of appearance, to render a personal decree against the non-resident, since the decree actually
114 rendered and here interposed as a defence, is not such a decree.

We think the decree presented no defence to the action (1) because the Florida Court had no jurisdiction to render it as to the non-residents, and (2) because it did not purport to determine the personal liability of the defendant in error to the plaintiff in error on the certificate of deposit. The decree is reversed and the cause remanded for further proceedings in conformity to this opinion.

Reversed.

JACK, *District Judge:*

On the ground that the Circuit Court of Hamilton County, Florida, was without jurisdiction in the Corbett case, I concur in the decree.

(Original filed March 10th, 1920.)

115 *Judgment.*

Extract from the Minutes of March 10th, 1920.

No. 3432.

THE STATE BANK OF ROME

versus

THE BANK OF JASPER.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause, be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court;

It is further ordered and adjudged that the defendant in error, The Bank of Jasper, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

116 *Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 103 to 115 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3432, wherein the State Bank of Rome is plaintiff in error and The Bank of Jasper is defendant in error, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 102 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of April, A. D. 1920.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

117 In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3432.

THE STATE BANK OF ROME, Plaintiff in Error,

versus

THE BANK OF JASPER, Defendant in Error.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the transcript of the record of the proceedings of this Court in the within entitled case heretofore certified by me for filing in the Supreme Court of the United States was correct and complete as the same then appeared in this Court.

In pursuance of the command of the annexed writ of certiorari I now hereby certify that on the 26th day of October, A. D. 1920, there was filed in my office a stipulation in the above entitled case in the following words, to-wit:

In the United States Circuit Court of Appeals in and for the Fifth Circuit.

#3432.

THE STATE BANK OF ROME, Plaintiff in Error,

vs.

THE BANK OF JASPER, Defendant in Error.

Stipulation.

Whereas, the United States Supreme Court, by a writ of certiorari sued on the 15th day of October, A. D. 1920, commanded the dges of the above Court to send to said United States Supreme urt without delay, the record and proceedings in the above en- ed cause, and

Whereas, there is now on file and of record in said United States preme Court a certified transcript of the record and proceedings the above entitled cause,

Now therefore, it is stipulated and agreed by and between coun- sel for the respective parties hereto that the said certified s copy of the transcript and proceedings of the above cause now on file and of record in the United States Supreme urt may be taken and considered by said United States Supreme urt as a sufficient compliance with and return to said writ.

Dated this 20th day of October, A. D. 1920.

(Signed) W. E. KAY,
J. L. DOGGETT,
HENRY C. CLARK,
Attorneys and of Counsel for the State Bank of Rome, Plaintiff in Error.

(Signed) F. P. FLEMING,
Attorney and of Counsel for The Bank of Jasper, Defendant in Error."

I further certify that the above is a true and correct copy of said pulation and of the whole thereof.

In testimony whereof, I hereunto subscribe my name and affix seal of said United States Circuit Court of Appeals, at the City New Orleans, Louisiana, this 26th day of October, A. D. 1919.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

119 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which The State Bank of Rome is plaintiff in error, and The Bank of Jasper is defendant in error, No. 3432, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Southern District of Florida, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Su-
120 preme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the fifteenth day of October in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 27,741. Supreme Court of the United States, October Term, 1920. No. 384. The Bank of Jasper vs The State Bank of Rome, Georgia. Writ of Certiorari. 3432. Filed 26th day of October, 1920. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

121 [Endorsed:] 384—27741. No. 3432. United States Circuit Court of Appeals for the Fifth Circuit. The State Bank of Rome, plaintiff in error, vs. The Bank of Jasper, defendant in error. Writ of certiorari and return thereto.

122 [Endorsed:] File No. 27,741. Supreme Court U. S., October Term, 1920. Term No. 384. The Bank of Jasper, petitioner, vs. The State Bank of Rome, Ga. Writ of certiorari and return. Filed Oct. 29, 1920.

Office Supreme Court, U. S.
FILED
JAN 9 1922
WM. R. STANSBURY
CLERK

FILE NO. 27,740

IN THE

Supreme Court of the United States

October Term, 1921

No. 76

THE BANK OF JASPER,
A CORPORATION,

Petitioner,

vs.

FIRST NATIONAL BANK OF ROME,
GEORGIA, A CORPORATION,

Respondent.

Chronological Index to Record, Showing Intermingling of Litigation in State and Federal Courts

W. E. KAY,
J. L. DOGGETT,
L. A. DEAN,
HENRY C. CLARK,
Attorneys and Counsel for Respondent.

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VERSUS		
FIRST NATIONAL BANK OF ROME, GEORGIA, A CORPORATION. *Respondent.*		No. 76.

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The State Court Final Decree in the Chancery Suit instituted by J. H. Corbett is found at page 21 of the record in case No. 74, October term 1921 of the Supreme Court of the United States.

The above is respectfully submitted for the convenience of the Court.

W. E. KAY,
J. L. DOGGETT,
L. A. DEAN,
HENRY C. CLARK,
Attorneys and Counsel for Respondent.